SUPREME COURT, U. S.

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In The
SUPREME COURT of the UNITED STATES
October Term, 1970

No. 1004

Clifford F. Hansen, Petitioner,

vs

Ann Lamm Haagensen, Respondent,

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF IOWA

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970
No. _____

Clifford P. Hansen,
Petitioner,

vs

Ann Lamm Haagensen,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF IOWA

Petitioner prays that a Writ of Certiorari issue to review the judgment and decision of the Supreme Court of Iowa, in its Case No. 105/53988.

The Decision of said Court in said case was filed on June 23, 1970. (App. H, p. A43.)

A Petition for Rehearing was filed on July 15, 1970, (App. I, p. A55); and within the 30 days period allowed by law.

The Order Denying said Rehearing was filed on Sept. 2, 1970. (App. J, p A77).

The said appeal involved the decision and judgment of the Winneshiek County District Court, (App. G, p A31), with

appropriate proceedings within the time allowed by law.

OPINIONS BELOW

The said Opinion of the Iowa Supreme Court is reported in Vol. _____, Iowa Reports, _____; Vol. 178, NW (2) 325 and is printed in the Appendix (App. H, p A43).

The decision of said trial court is not known to be reported; but is printed in the Appendix herein, (App. G, p A31).

The litigation in the Iowa District Court involved a money judgment entered in the Hennepin County, Minnesota, District Court, on a Minnesota Contract, (App. A, p A1). The Decision of the Minnesota Court, pursuant to which said Judgment was entered, is printed in the Appendix. (App. B, p A6).

JURISDICTION

The federal questions involved were raised in the original pleadings in the Iowa Court. And upon an answer being filed by Defendant, said questions were brought before the Iowa Court on a Motion for Summary Judgment. (App A to E, incl. p A1 to A28; and App. F, p A29).

The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S. Code, Ann. #1257, Subdiv. 3, as applicable to Art. IV, Sec. 1, and Art. VI, of the U.S. Constitution, and 28 U.S. Code, Ann., #1738. (App. P, p A81-A83).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. Art. IV, Sec. 1, of U.S. Constitution, relative to full faith and credit.

II. Art. VI, of U.S. Constitution, relative to the Constitution as the Supreme Law of the Land.

III. Sec. #1738, of 28 U.S. Code, Ann., relative to authenticated copies of state judgments.

IV. Sec. #1257, of 28 U.S Code, Ann., relative to review by Certiorari. (App. P, p A81-A83).

QUESTIONS PRESENTED

I. Under the 4th Amendment, the Iowa Courts must give full faith and credit to the Minnesota Judgment, proved by authenticated copy, and also by confirming evidence, where the Minnesota Court, under Minnesota Law, had jurisdiction of the subject matter and over the defendant.

II. Under the 4th Amendment, the Iowa Courts may not harbor a collateral attack upon the Minnesota Judgment, proved by authenticated copy thereof, and also by confirming evidence, where the Minnesota Court, under Minnesota Law, had jurisdiction over the subject matter and over the defendant.

III. Under the 4th Amendment, and proof of the Minnesota Judgment, by authenticated copy thereof, the Defendant is required to assume the burden of showing want of jurisdiction of the subject matter and/or over the defendant, under the Minnesota Law; to-wit, a void judgment.

IV. Under the 4th Amendment, and the Minnesota Court, under its laws having jurisdiction of the subject matter and over the defendant, proved by the authenticated copy thereof, and also by confirming evidence, the Iowa Courts cannot sit in review of judicial proceedings used and approved by the Minnesota Court in rendering said judgment.

V. Under the 4th Amendment and the laws of Minnesota, the Decisions of the Iowa Courts are in violation of the law of the case; and contrary to the legal facts binding on said courts; and therefore in violation of the Constitution.

STATEMENT OF THE CASE

Petitioner, as Plaintiff, obtained a Judgment for money, on a complaint for money, in September 1961, in the Hennepin County, Minnesota, District Court, a constitutional court of general jurisdiction, against Defendants McAndrews and Haagensen, and each of them (App. A, p A1)

Said judgment was for legal services rendered Defendants on a Minnesota Contract of employment; and whereunder they recovered substantial properties after much adverse litigation in Iowa and Minnesota. After recovery on said services, Defendants and their Iowa attorneys employed various schemes to avoid payment of fees for said services. One attorney called in by Plaintiff to try the case as local attorney secretly entered into an agreement with Defendants for a prior percentage fee, under which $38,000 was claimed. 252 Iowa 1045; 109 NW (2) 708.

In the meantime, Defendant McAndrews moved to Wisconsin, where suit was brought against her on said Judgment, and the same accorded full faith and credit under Art. IV. An appeal by that Defendant to the Wisconsin Supreme Court was taken after the decision by the Iowa Supreme Court; and is now pending.

In July, 1965, after suits in North Dakota and property transferred by Defendants, suit was brought on the Minnesota Judgment against Defendant Haagensen in Iowa, being the litigation involved herein. A claim of full faith and credit was made in the pleadings.

Two years were required to dispose of defense motions. Defense counsel then entered an Answer mainly of denials.

Thereupon, in 1967, a Motion was made for Summary Judgment on the following papers: Authenticated copy of the Minnesota Judgment, (App. A, p. A1), and the following other papers: Certified copy of the Decision of the Minnesota Court, (App. B, p A6); written Appearances and Motions by Defendant, (App. C, p A18); Order by Judgment Knutson denying Motions to dismiss, (App. D, p A23); and ,various other papers in the Motion for Summary Judgment, (App. F, p A29).

Defendant, as expected, filed general denials, although photo copies of various Minnesota papers were filed. Defense counsel made no showing on the burden of proof required of Defendant under the U.S. Supreme Court decisions in connection with an authenticated copy of the Minnesota Judgment. The trial court accepted such denial as constituting such burden of proof.

Then followed two years of briefs, extensively by Plaintiff. There was a threat to dismiss the action for want of prosecution. And in January, 1969, Plaintiff made a Supplemental Motion for immediate determination and allowance of the Motion for Summary Judgment, with request for specific findings. (App. M, p A79).

In February, 1969, a trial was held; ostensibly on the Motion for Summary Judgment, but conducted as a trial. During such trial, defense counsel introduced three exhibits covering only intrinsic evidence, in part; and objected to as irrelevant. During such trial, the judge stated in an aside to defense counsel not to object to certain matters, as it was "necessary to get behind the Judgment".

Thereafter, the trial court made the Decision set forth in App. G, p A31.

REASONS FOR GRANTING THE WRIT

See Petition for Rehearing, App. I, p A55, with citations bearing on the points below.

The Decisions of the Iowa Courts should be reviewed and reversed, because:

1. The Iowa Courts erred in failing and refusing to distinguish between a void

judgment and a not void judgment, under Minnesota law.

2. The prerogative, or jurisdiction of the Iowa Courts, as respects the Minnesota Judgment sued on, extended only to finding facts that said Judgment, under Minnesota Law, was void, either for want of jurisdiction in the Minnesota Court over the subject matter or over the Defendant as to service of personal process.

3. In addition to the authenticated copy of the Minnesota Judgment, (App. A, p A1), the record in the Iowa Courts established positively that the Minnesota Court, under Minnesota Law, had jurisdiction of a suit to recover money for legal services rendered to Defendant under a Minnesota Contract. (App. E, p A26).

4. The record in the Iowa Court establishes positively that the Minnesota Court, under Minnesota Law, had jurisdiction over the Defendant by reason of a voluntary appearance and an attack on the powers of the Minnesota Court, and a motion to "dismiss" the action, which was denied; and with no appeal therefrom. (App. C, p A18; App. D, p A23; App. E, p A26; and App. B p A6).

5. The Iowa Courts are bound by the findings of the Minnesota Court on the intrinsic evidence in the Minnesota

record (App. B, p A6).

6. The record in the Iowa Court contains no extrinsic evidence offered by Defendant bearing on the jurisdiction of the Minnesota Court, under Minnesota Law, as to either the subject matter or the Defendant. (App. L, p A78).

7 The law of Minnesota contains no provision for a special appearance, such as Defendant and her Iowa attorney attempted to make, except as the Minnesota law allows a motion to vacate and set aside the service of personal process, and not applicable here. Mason's Dunnell's Minn. Digest, Vol. 1B, 1967, p 406, #481; Cummiskey vs Cummiskey, 1961, 259 Minn. 427; 107 NW(2) 864

8. The Defendant, after personally receiving a copy of the Summons and Complaint, (App F, p A29), and with full information as to the issues, moved to attack the powers of the Minnesota Court and dismiss the Minnesota action, (App. C, p A18); and made no appeal from an adverse ruling, whereby the same became res judicata.

9. The Defendant, under Minnesota law, made a general appearance; and with full opportunity to be heard, then withdrew from the case and defaulted with respect to other issues raised by the Minnesota

Pleadings. (App. B, p A6, App. L, p A78)

10. The Iowa Courts, under Minnesota Law, and the Constitutional provisions here involved, cannot collaterally attack the Minnesota Judgment sued on, as to matters not going to a void judgment. See Citations in Petitions for Rehearing. (App. I, p A55).

11. The default of Defendant is adequately established by the time allowed Defendant to raise other issues, as required by the Minnesota Code; and also the testimony of her attorney before the Iowa Court, (App. L, p A78); and the findings of default by the Minnesota Court, in accordance with the Minnesota Law, (App. B, p A6); and is not subject to collateral attack in the Iowa Courts, or in the Minnesota Courts. (App. I, p A55).

12. The Iowa Courts violated the constitutional rights of Petitioner, duly asserted in the pleadings in the Iowa proceedings from the beginning of the Iowa action, (App. K, p A77); for the various reasons set forth in the Petition for Rehearing. (App. I, p A55).

ARGUMENT

The Propositions set forth in this Petition as reasons for granting a Writ of Certiorari, it is believed, are so interrelated that they may for brevity be discussed together.

Introductory

The Iowa Courts are bound by the Constitution and the laws of the U.S. (App. P, p A82); the decisions of this Court; and the laws of the State of Minnesota. (App. E, p A26).

Totally irrelevant are the laws and court decisions of Iowa; and rules of comity. The Iowa Court Record contains no extrinsic evidence bearing on the jurisdiction of the Minnesota Court over the subject matter and/or the defendant, under Minnesota law. As to the intrinsic evidence received by the Minnesota Court, exhibits and oral testimony, the Iowa Courts are bound by the Decision, (findings, etc.) of the Minnesota Court, since Defendant did not appeal any matters therein involved. The Iowa Courts could consider only issues relating to jurisdiction as presented by extrinsic evidence; or as appeared in the Record showing want of jurisdiction, as a matter of law. The Iowa Courts were without jurisdiction to make inquiry as to any other matters; or

harbor a collateral attack upon the Minnesota Judgment; or make findings of fact on the intrinsic evidence, particularly upon a partial record, contra to the Record and contra to the Findings of the Minnesota Court. (App. B, p A6).

Primary Issues

The issues before the Iowa Courts were the validity of the Minnesota Judgment, (App. A, p A1), under Minnesota law, as respects the jurisdiction of the subject matter and/or over the Defendant. Milliken vs Meyer, Colo. 1941, 61 S Ct. 339; 311 U.S. 457; Lucas vs Vulcan Iron Works, DC Pa. 1916, 233F 823; Adam vs Saenger, Tex. 1938, 58 S. Ct. 454; 303 U.S 59.

The Iowa Courts, under the pleadings in that court, were confronted with an authenticated copy of the Minnesota Judgment. (App. A, p A1). Under the decisions of this Court, such copy established a prima facie case as to the validity of the Minnesota Judgment as to jurisdiction, the only field of inquiry open. And the burden is cast upon the Defendant to overcome said prima facie showing that said judgment is valid, and not void. Huntington vs Attrill, Md. 1892, 13 S. Ct. 224; 146 U.S. 684; American Express Co. vs. Mullin, Ky. 1909, 29 S. Ct. 381; 212 U S. 312; Morris vs Jones, Ill. 1947; 67 S. Ct. 451; 339 U.S. 545.

The proceeding in the Iowa Court was a suit upon a money judgment; and any alleged invalidity of the claim on which it is founded is not open to inquiry. The Judgment of the Minnesota Court is an obligation to pay money in the nature of a debt upon a specialty and recovery thereon can be resisted only on the grounds that the Minnesota Court was without jurisdiction of the subject matter and/or over the Defendant. Milwaukee County vs M.E. White Co. 1933; 56 S Ct. 229; 296 U.S. 268; Titus vs Wallick, Ohio, 1939; 59 S. Ct. 557; 306 U S. 282.

The provisions of the U.S. Constitution and the laws of the U S. here involved were by this Court construed in Milliken vs Meyer, 1941, 61 S. Ct. 339; 311 U.S. 457. The Court there said that where the trial court, (here, the Minnesota Court) has jurisdiction of the subject matter and the person of the Defendant that the full faith and credit clause of the Constitution precludes any inquiry, (here, by the Iowa Courts), into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based, and whatever mistakes of law may underlie the judgment. In other words, the only judgment disqualified under the full faith and credit clause is a judgment void for want of jurisdiction over the subject matter and/or the

defendant, under Minnesota Law. Any other judgment, including one alleged to be voidable, must be corrected or set aside in the court of rendition. See Minnesota citations, at App. I, p A65-A66.

The Milliken case and the Minnesota citations were repeatedly called to the attention of the Iowa Court. The Iowa Courts are required to follow the Minnesota Law. (App. E, p A26) See Memos on Minnesota Cases, at App. I, p A65-A66.

As bearing on the Minnesota Law, two cases from different states, but both of which reached the Supreme Court of Michigan, and similar in vital respects to the case at bar, are as follows:

Johnson vs. Haley, 1959; 357 Mich. 411; 92 NW(2) 355.

This case involved an automobile highway accident in California. The Defendant appeared specially, and objected to the jurisdiction of that court. Upon being overruled, the defendant withdrew from the case. (In the case at bar, the Defendant attempted to appear specially, objected to the "jurisdiction" of the Minnesota Court; and upon being overruled, withdrew from the case.) (App. L, p A78). The California Court entered a default judgment. The Defendant attempted to

deny the jurisdiction of the California Court. The Michigan Court held that every court had the right to rule upon its own jurisdiction. There was no appeal in the California proceedings. The Michigan Court held that the Plaintiff was entitled to judgment.

Also, there was no appeal in the Minnesota Case. The Defendant just withdrew. And apparently hoped for a more favorable court in Iowa.

Johnson vs DeGiovana, 1956, 347 Mich. 118, 78 NW(2) 540.

That case started in Texas upon a transaction there, with apparently garnishment proceedings. Texas is a code state, with the provision that any writing filed with the Court is an appearance. (The Minnesota Code has a similar provision. App. E, p A26). A Michigan attorney for the defendant, a Michigan resident, wrote a letter, (apparently not considered a pleading), to the Texas Court stating that Defendant did not owe the alleged claim. The Texas Court entered judgment against Defendant.

In a suit on the Texas Judgment, the Michigan Supreme Court held that said judgment was entered in accordance with Texas laws; and thus entitled to full faith and credit.

Case at Bar

Likewise, the judgment sued on was entered in accordance with the Minnesota law. See Decision of the Court, App. B, p A6-A17. In Minnesota, the Judgment is entered by the Clerk, and not by the Court. There was no appeal from said Judgment. And the said Decision, (App. B, p A6) and the said Judgment, (App. A, p A1) are not subject to appellate review by the Iowa Courts. Nor can the Iowa Courts hold a new trial on a portion of the Minnesota Record, and then say that other facts should have been found.

The Iowa Court could receive extrinsic evidence bearing on jurisdiction. Or lacking such extrinsic evidence, does the Record, the whole record, show lack of jurisdiction over the subject matter or the defendant, Is defendant questioning the attachment matter? There was no appeal, and the determination of the Minnesota Court is res judicata. Does defense counsel claim that the Minnesota Court, as a constitutional court of general jurisdiction (App. E, p A) does not have power to enter the judgment herein. And in the face of said provision, is there anything in the Record showing that the Minnesota Court could not exercise its constitutional powers? No.

Perhaps this is the time to mention a recital in the Iowa Decision relative to a "December 2nd judgment". (App. H, p A43) This is a complication caused by defendant counsel; and which the Iowa Court is using "to get behind the judgment". In October an affidavit of default was filed. No appearance at any time had been made prior thereto. The said default matter was notice for November 18th. Defense counsel mailed in his first notice (App. C, p A18). It was filed on November 17th. But defense counsel did not appear on November 18th. He appeared only once, on December 30th. (App. L, p A78). The practice in the Clerk's office is to pull the files several days in advance of special term day. Thus, the Notice, filed in duplicate following Iowa practice, never reached Plaintiff. Defense counsel did not serve any notice of such filing, as required by Minnesota Rules. The Iowa trial court did not require Defendant to prove notice to Plaintiff. And at no time did the Iowa Court require the Defendant to meet the burden of proof which the law required. In connection with the Summary Judgment Motion, defense counsel claimed the burden of proof was met by filing a denial. And the trial court accepted same as proof. Defense counsel did not appear on November 18th. And Defendant's Notice was not discovered until about to file the December 2nd findings, which are entirely silent about any appearance. Such findings were not a

judgment, as the Iowa Supreme Court states. (App. H, p A43). The framers of our Constitution showed their wisdom by not allowing one state court re-try or sit in appellate review of a money judgment of another state court.

Defense counsel and the Iowa Courts refuse to follow the ruling of this Court in Cooper vs Reynaold, 10 Wall. 308, also Riverton State Bank vs Dreyer, Kan. 362 Pac.(2) 55. Concededly, the Minnesota action was "quasi in rem" until Defendant made a voluntary appearance to attack the powers of the Minnesota Court. (App. K, p A23). Minnesota does allow a motion to vacate a defective service of summons on the person. The theory is that by such defect the court never did acquire jurisdiction. In the case at bar, Defendant did not question the process used by Plaintiff. The attack was upon the power of the court, which was required to exercise its jurisdiction and powers in passing on the question. There being no appeal, the issue became res judicata and cannot be questioned in the Iowa courts.

The testimony of Defendant's attorney, (App. L, p A78) now make it clear that Defendant, after the December 30th hearing, did in fact withdraw from the case. And the Defendant having defaulted in entering any pleading within twenty days after December 30th, the most favorable

date to Defendant, and having taken no steps to open up the case for over a year, the Defendant was subject to a default judgment. Defendant did not, and is not able to, show any law effecting the validity of said default judgment. Plaintiff was under no obligation to give legal advice to Defendant and defense counsel. It seemed advisable to let the matter stand for a year. Time was required to check the law involved. And Defendant having made a general appearance under Minnesota Law, a second independent action could not be brought on the same cause.

Jurisdiction of Subject Matter

The Minnesota Court, being a constitutional court of general jurisdiction (App. E, p A26), it had jurisdiction over the matters involved in the Minnesota action, and the judgment there entered. The Judge of the Minnesota Court so expressly found. (App. B, p A6-A17).

The Iowa Courts appear to have determined that the Minnesota Court could not attach property not standing in the name of the Defendant. That is not the law in Minnesota. Specific property, located in Fillmore County, standing in the name of the sister of Defendant, was attached. The Minnesota Court so ruled. (App. B, p A6-A17). And if Defendant had had no

interest therein, there would have been no occasion to appear in the Minnesota Court to set aside the attachment. No question was raised as to her interest therein. What Defendant said over her verified signature was that Defendant did not own any property "in Hennepin County". (App. C, p A18-A22). The Iowa Supreme Court was not justified in stating in its Decision that Defendant claimed not to own any property "in Minnesota" There is no such evidence in the Record. The result of such untrue statement is to give the Iowa Supreme Court Decision a credence to which it is not entitled.

In Minnesota, in an action properly begun by the issuance of process, equitable interests as well as legal estates in land may be attached. "Practice and Procedure in Minnesota", by Assoc. Justice Charles Burke, Vol. 1, page 370, Sec. 426, citing Atwater vs Manchester Savings Bank, 45 Minn. 341; 48 NW 187; 12 LRA 741.

In Minnesota, all forms of property which are subject to levy on execution are subject to attachment. Mason's Dunnell Digest, Vol. 2, p 93, #627. And equitable interests in land are subject to levy. Mason's Dunnell, Vol. 7, p 338; #3510.

The Minnesota Court, in its Decision, found on the evidence presented to it, which the Iowa Courts did not have or seek to obtain; (the Defendant did not appear

and testify in the Iowa proceedings, for reasons which Defendant Counsel no doubt had); that both Minnesota Defendants, McAndrews and Haagensen, had an interest in the property attached. (App. B, p A6-A17). The Defendant was considered a spendthrift and kept most of her property in the names of her two sisters, which was well known to Attorney Anderson and also to Petitioner. See McAndrews and Haagensen vs Krause, 245 Minn. 85; 71 NW(2) 153, being earlier litigation.

That situation was also well known to the Iowa Courts and called to the attention of the Iowa Supreme Court in the Brief of Appellant.

Thus, the Iowa Supreme Court well knew that the property of the three sisters was held in such a way as to make it difficult to determine just who owned what. And as noted, there was no claim by Defendant in the Minnesota Court that said Defendant did not have an interest in the property attached. And the Minnesota Court found that both had an interest in the property attached. (App. B, p A6-A17). There again the Iowa Court violated the law by attempting to make inquiry of the facts behind the judgment.

Appearance by Defendant

As to the question of appearance; the Minnesota Rules of Civil Procedure for the District Courts became effective on January 1, 1952. See Minn. Stat. Ann., Vol. 27A, Court Rules; pub. 1958. They were the Rules in force at the time of the institution of the Minnesota action.

There is no provision for Special Appearance in said Rules. And Rule 4:04, relative to attachments, see page 77 of said Edition, (App. E, p A26) contains no provision relative to special appearance on any grounds.

The Minnesota Supreme Court, in Mikel vs Drilling Co., 1960, 257 Minn. 487; 102 NW(2) 293, stated that special appearance was abolished by the Code. And in Cummiskey vs Cummiskey, 1961, 259 Minn. 427; 107 NW(2) 864, the Minnesota Supreme Court stated that a motion is allowed to dismiss an action where there may be a defective service of personal summons. Also Mobley vs Allaman, Ohio 184 NE(2) 707.

Nothing is said with respect to a voluntary appearance not connected with personal process. See also, State ex rel, Glaser vs. Glaser, 272 Minn. 62; 137 NW(2) 549. The reason appearing to be that where there is a defective service of

personal summons, the court never did acquire jurisdiction.

However, a voluntary appearance and a challenge as to the jurisdiction of the Court itself, whereby the Court is asked to rule on its own powers, constitutes an "appearance"; and a submission to the jurisdiction of the Court for all purposes. Burger vs Burger, 1957, Texas, 298 SW(2) 119. There was no appeal from the ruling of the Minnesota Court that it did indeed have such power. The matter was res judicata. Under what rule of law, or Minnesota authority, did the Iowa Court claim the right to relitigate the matter, and sit in appellate appeal on the decision of the Minnesota Court?

Minnesota Rule of Civil Procedure, #5:01 (App. E, p A26) provides that the filing of any paper is an appearance. And Sec. #82, Re-Statement of the Conflict of Law, Conflict of Laws, 1934, Ed., provides that an appearance by the defendant gives the court jurisdiction over him for all purposes of the action, if the laws of the state have such effect. There is no provision in the Minnesota Code for a limited voluntary appearance for the purpose made here.

Findings by the Minnesota Court

Sec. Par. 11, of the Findings in the Decision of the Minnesota Court, dated Sept. 26, 1961 (App. B, p A14-15), briefly stated: Defendant appeared on November 17, 1959; and on December 8, 1959; and on December 28, 1959; and again on December 30, 1959, within the meaning and conditions of said Rule 5:01, and also that on December 30, 1959, at Special Term, the objections of Defendant to the jurisdiction of the Minnesota Court were overruled. And any questions as to attachment proceedings are res judicata. Such findings are binding on the Iowa Courts. And there is no extrinsic evidence to the contrary.

In Par. 10 of said Findings, the Court found that the Judgment for the total claim (for legal services upon a Minnesota Contract) was on January 7, 1960; but which could not then be final. There is no justification for the statement by the Iowa Court that the Judgment was entered on December 2, 1959, and before Defendant had appeared.

Thus, it will be noted that the statement of facts by the Iowa Courts in their decisions are not correct. It is upon such facts, contra to those found by the Minnesota Court; and without extrinsic evidence, that the case for Defendant is built.

Further, with the burden of proof upon the Defendant, and no extrinsic evidence bearing on the Minnesota Contract, or to contradict the voluntary appearances, the decisions of the Iowa Courts are contrary to law and should not be permitted to stand.

re: In Rem Claims

What is said in the Iowa Decisions about "In rem" proceedings as applied to the case at bar is without merit. Concededly, the Minnesota action was "quasi in rem" until the voluntary appearance by Defendant. Thereupon the action became one "in personam". Riverton State Bank vs Dreyer, Kan 362 Pac(2) 55. Cooper vs Reaynolds, 10 Wall. 308. Pollard vs Dwight, 4 Cranch 421. These cases are also authority for the rule that jurisdiction of the person is obtained by voluntary appearance.

Minnesota District Court

As to the Order of the Minnesota District Court relative to the Attachment, which was attacked by Defendant (App. D,p A23), the District Court of Minnesota is considered as one court, with various divisions or districts. The Order of the Minnesota Court overruling such objection was in accord with the law in Minnesota. See Clements vs Utley, 91 Minn. 352; 68 NW 188.

It should be noted that the above does not go to the jurisdiction over the subject matter, which is the Minnesota contract involved. The rights thereunder became merged in the money judgment. And when the Iowa Courts attempted to go behind that money judgment, they were violating the law of the case. Indemnity Ins. Co. of No. America vs Smoot, 1945, 152 F(2) 667; 80 U.S. App. DC 287; cert. den. 66 S. Ct. 981; 228 U.S. 835. Midessa Television Co. vs Motion Pictures of Television, Inc. 1961. CA-Tex. 290 F(2) 203; cert. den. 82 S. Ct. 47; 368 U.S. 827.

Default Judgment

A Judgment by default, after withdrawal by Defendant after a voluntary appearance, and no appeal from a denial of an attack on the powers of the Minnesota Court as affects a collateral matter; and which became res judicata, is entitled to full faith and credit. Morris vs Jones, Ill. 1947 67 S Ct. 451; 329 U.S. 545; 91 L Ed 488; rehearing denied, 67 S. Ct. 858; Parker vs Hoefer, 1957, 142 NE(2) 194; 162 NYS(2) 13; 2 NY(2) 612; American Express Co. vs Mullins, Ky 1909, 29 S. Ct. 381; 212 U.S. 312; 53 L Ed 520; Johnson vs Haley, 1959, 357 Mich 411; 92 NW(2) 355; Am Jur (2) Vol. 5, p 481; Mayhew vs Thatcher, 6 Wheat 129; 5 L Ed 223; Am. Jur.(2), Vol. 47, p 201, #1178. Barber vs Barber, 1944, Tenn. 67 S. Ct. 137; 323

U.S. 77; 89 L Ed 82. Adam vs Saenger, 1938, Tex. 58 S. Ct. 454; 303 U.S. 59; 82 L Ed 649; York vs Texas, 1890, 11 S. Ct. 9; 137 U.S.15, 20; 34 L Ed 604.

Defendant appeared; had an opportunity to be heard under the laws of Minnesota; and then voluntarily withdrew. (App. L, p A78).

Collateral Attack

As to a collateral attack upon the Minnesota Judgment, attention is called to the Minnesota cases cited in the Petition for Rehearing, (App. I, p A65-A66). Kipp vs Fullerton, 4 Minn. 473 (Gil 366); Hotchkiss vs Cutting, 14 Minn. 537 (Gil 408); Cone vs. Hopper, 18 Minn. 531 (Gil 476); and Hall vs Sauntry, 1898, 72 Minn. 420; 75 NW 720. These cases are authority for the rules that a Minnesota Judgment cannot be attacked for any irregularity or error; and cannot be impeached collaterally; and are absolutely binding until set aside by the court of rendition or reverse on error.

The constitutional and federal provisions here applicable (App. P, p A82) require the Iowa Courts to give the Minnesota Judgment the same standing in Iowa that it has in Minnesota. This directly affects what the Iowa Courts did in the case at bar.

Summary

The case at bar properly involves only two questions:

First, did the Minnesota Court, under Minnesota law, have jurisdiction over the subject matter?

The evidence and the Record are conclusive that the Minnesota Court is a court of general jurisdiction; and that the subject matter is a Minnesota contract, with a collateral matter which is res judicata as far as the Iowa courts are concerned.

There was no extrinsic evidence to the contrary.

Second, did the Minnesota Court, under Minnesota law, have jurisdiction over the Defendant?

The Minnesota law provides that the filing of any paper is an appearance. (App. E, p A26).

There is no provision in Minnesota Code for a special appearance.

The Defendant made numerous appearances, as found by the Minnesota Court. (App. B, p A14-A15).

The Minnesota Court found that it had jurisdiction in the premises. (App. B, p A6-A17).

There was no extrinsic evidence to the contrary.

Under the ruling of this Court, (Milliken vs Meyer), the Iowa Courts were limited to a trial and finding on those two questions. And with an authenticated copy of the Minnesota Judgment in the Record, (App. A, p A1-A5), the Defendant had the burden of proof as to said questions.

The findings of the Iowa Courts in its decisions, and the mis-statement of the facts and the law therein, to the prejudice of the constitutional rights of Petitioner, and for the benefit of a resident Defendant, are a clear violation of law by the Iowa Courts; and should be set aside. Mutual Life Ins. Co. vs McGraw, Cal. 1903; 23 S. Ct. 375; 188 U.S. 291.

CONCLUSION

For the foregoing reasons, and because the said Iowa Courts refuse to recognize said valid judgment of the Minnesota District Court, contrary to Art. #4, Sec. 1, of the U.S. Constitution, and the laws of the State of Minnesota, and to the prejudice of Petitioner, this Petition

for a Writ of Certiorari should be granted, together with such further relief in the premises as provided by law.

Respectfully submitted,

Clifford F. Hansen
1040 Midland Bank Building
Minneapolis, Minnesota 55402
Counsel Pro Se

Of Counsel
Hon. Harry H. Peterson
Minneapolis, Minnesota

Rec. 1 - Original Notice, p A-56, par. 2
Rec. 3 - Minnesota money damage action, p A-56, par. 8
Rec. 4 - Minnesota Complaint, p A-56
Rec. 4 - Art. IV, Sec. 1, p A-55, par 1
Rec. 6 - Summary Motion Judgment, p A-56, par. 4
Rec. 11 - M.R.C.P. #5, as to service of Notice, p A-58, par. 16
Rec. 12 - Dec. 8, 1959 Appearance, p A-59,par.19
Rec. 15 - Denials by Defendant to Summary Judgment Motion, p A-56, par. 6
Rec. 39 - Abandonment of action by Defendant; p A-61
Rec. 86 - Judgment, exemplified, p A-56, p 3
Rec. 92 - Ex. #4, Default, p A-61, par. 34
Rec. 91 - Ex. #2 - Jurisdiction of Minn. Ct. p A-57, par. 13
Rec. 91 - M.R.C.P. #5:01, p A-57, par. 14
Rec. 93 - Findings of Minn. Ct., p A-57,par. 10
Rec. 95 - Aff. of Default, p A-57, par. 12
Rec. 98 - Findings of Minn. Trial Court, as to appearance; p A-61, par. 29
Rec. 96 - Noticed Hearing for Dec. 30, 1959; p A-59, par. 22
Rec. 104 - Ex. #5, Copy of Minn. Summons and Complaint; p A-57, par. 11
Rec. 107 - Ex. #8, Appearance of Defendant on Nov. 17, 1959, p A-58, par. 15
Rec. 107 - Ex. #8, Attack on powers of Minnesota Court, p A-59, par. 21
Rec. 110 - Claim as to Minnesota property of Defendant, p A-59, par. 20
Rec. 112 - Ex. #10, Denial of Motion to Dismiss, p A-60, par 23 & 24

Defendant's Exhibits No. 1, No. 2 and No. 3 are not printed in the Appendix for these reasons: 1st; they involve only intrinsic matters, considered by the Minnesota Court; 2nd; they do not bear on want of jurisdiction of the subject-matter; and 3rd; they do not dispute or question the voluntary appearance of Defendant under Minnesota law.

To comply with Rule 36, par. 6

Iowa Record, p. 1-5 Item No. 2, Pleadings, App K p A-77
Iowa Record, p. 12 Item No. 22, Aff. of No payments App. E, p A-30, par. 4
Iowa Record, p 38, Testimony of Atty. Gross, quoted in part. App L. p A-78. Only extrinsic evidence in Record.
Iowa Record, p 41, Item No. 27, Summary Judgment Motion; App. F-1-A-30 Par. 5.
Iowa Record, p 41, Item No. 28, Decision of Trial Court, App. G, p A-31
Iowa Record, p 41, Summary Judgment Motion, App. M, p A-79
Iowa Record, p 53, Motion for New Trial, App N, p A-80
Iowa Record, p 63, Item 32, Notice of Appeal; App. O, p A-82
Iowa Record, p 86, printed Record of Exhibit No. 1, Judgment, authenticated. App. A- p A-1
Iowa Record, p 91, Ex. No. 2, Minn. Const. Sec. 5; and Ex. #0.3, M.R.C.P. #5:01 and #4:04, App. E, p A-26
Iowa Record, p 92, Ex. No. 4, Decision of Minnesota Court, App. B, p A-6.
Iowa Record, p 104, Ex. No. 5, Aff. of Personal Service, App. F, p A-29, par. 1.
Iowa Record, p 105, Ex. No. 6, Application of Atty. Gross, App. F, p A-29, par. 2.
Iowa Record, p 106, Ex. No. 7, Order approving Application, App. F, p A-29, par. 3.
Iowa Record, p 107, Ex. #8 and Ex. #9, Written Notices of Appearance, App. C, p A-18
Iowa Record, p 112, Ex. No. 10, Order by Judge Knutson; App. D, p. A-23.
PETITION FOR REHEARING, App. I, p A-55, is not a part of Iowa Trial Record. Following are references to said Record in said Petition.

PETITIONER'S APPENDIX A - AUTHENTICATED COPY OF MINNESOTA JUDGMENT.
(Iowa Record, p 86 et seq.)
PRINTED RECORD EXHIBITS

Exhibit No. 1 - JUDGMENT, as filed with Clerk on August 24, 1965.
Judgment, trial on findings.

STATE OF MINNESOTA 548-060	DISTRICT COURT
COUNTY OF HENNEPIN	FOURTH JUDICIAL DISTRICT
Clifford F. Hansen, Plaintiff, vs	JUDGMENT
Rosalia Lamm McAndrews and Anne Lamm Haagensen, Defendants.	September 26, 1961

The above entitled action having been regularly placed upon the calendar of the above named Court for the September, A.D. 1961, General Term Thereof, came on for trial before the Court on the 26th day of September, A.D., 1961, and the Court, after hearing the evidence adduced at said trial and being fully advised in the premises, did, on the 26th day of September, A.D. 1961, duly make and file its findings and Order for Judgment therein.

Now, pursuant to said order and on motion of Clifford F. Hansen, Esquire, Attorney Pro Se for Plaintiff, it is hereby adjudged that the Plaintiff recover of the Defendants, and each of them, the sum of Six Thousand Four Hundred Eighty-nine and 83/100s Dollars, the amount ordered, and interest to date hereof, amounting in the whole to the sum of Six Thousand Four Hundred Eighty-nine and 83/100s Dollars, $6,489.83.

BY THE COURT

PHILIP C. SCHMIDT
Clerk of District Court
by /s/W.A. Carlson, Deputy.

with the following endorsements thereon:

No. 548060 STATE OF MINNESOTA
COUNTY OF HENNEPIN DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Clifford F. Hansen, Plaintiff, vs
Rosalia Lamm McAndrews and Anne Lamm Haagensen, Defendants.

Damages, $6,489.83. Costs 0. Total $6,489.83.

JUDGMENT ROLL, Filed and Judgment Docketed September 26, 1961, A.D. at 1:00 o'clock P.M. PHILIP C. SCHMIDT, Clerk, by (s) C.A. Carlson, Deputy.

Certificates -

STATE OF MINNESOTA) DISTRICT COURT
)ss FOURTH JUDICIAL
COUNTY OF HENNEPIN) DISTRICT

I, PHILIP C. SCHMIDT, Clerk of the above named Court, do hereby certify that I have compared the paper writing to which this certificate is attached with the original JUDGMENT in the action therein entitled, as the same appear of record and on file in the said Clerk's Office, at the Court House in said Hennepin County, Minnesota, and find the same to be a true and correct copy thereof, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at the City of Minneapolis, in said County, this 23rd day of August, A.D., 1965.

/s/ PHILIP C. SCHMIDT
Clerk of the Diatrict Court

STATE OF MINNESOTA)
)ss
COUNTY OF HENNEPIN)

I, JOHN A. WEEKS, Presiding Judge of the District Court for the Fourth Judicial District, State of Minnesota, do hereby certify that PHILIP C. SCHMIDT,

whose name is subscribed to the aforegoing certificate of attestation, is and was at the time of making the same, the Clerk of said District Court, in and for the County of Hennepin, said State of Minnesota, duly elected and qualified, the keeper of its seal and the custodian of its files and records, and that his official acts are entitled to full faith and credit; that I am well acquainted with the handwriting of said Clerk, and verily believe his signature to said certificate to be genuine, and that said certificate is in due form and by the proper officer.

Witness my hand at the City of Minneapolis, in said County of Hennepin, and State of Minnesota, this 23rd day of August, 1965.

/s/JOHN A. WEEKS
Presiding Judge

STATE OF MINNESOTA)
)ss
COUNTY OF HENNEPIN)

I, PHILIP C. SCHMIDT, Clerk of the District Court, Fourth Judicial District in and for the County of Hennepin, State of Minnesota, do hereby certify that the Honorable JOHN A. WEEKS, whose name is subscribed to the foregoing certificate of attestation, is and was at the time of making the same, Presiding Judge of said District Court, for the Fourth Judicial

District, State of Minnesota, duly elected and qualified, and that his official acts are entitled to full faith and credit; that I am well acquainted with the handwriting of said Judge, and verily believe his signature to said certificate to be genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court at the City of Minneapolis, in said County, this 23rd day of August, A.D., 1965.

/s/ PHILIP C. SCHMIDT
Clerk of District Court

COURT SEAL

APPENDIX B

Exhibit No. 4 - DECISION AND ORDER FOR JUDGMENT, of the Hennepin County District Court, dated September 26, 1961. (Iowa Record, p 92)

The above-entitled matter having been regularly on the calendar of the above Court, and coming duly on for hearing and determination, before the Court, and the undersigned Judge thereof, at the Hennepin County Court House, in the City of Minneapolis, in the County and State aforesaid, on the 26th day of September, 1961, upon motion of Clifford F. Hansen, as Plaintiff and Attorney Pro Se, as hereinbefore filed herein; and it appearing to the Court from the files and records in said action, as follows:

that on August 21, 1959, a Summons and Complaint were duly filed with the Clerk of Court herein, and the Bond provided by law herein duly approved and filed with the Clerk of Court;

that on August 24, 1959, Albert N. Anderson duly assigned to Clifford F. Hansen, the above-named Plaintiff all his claim and interest in and to the choses in action set forth in the Complaint, and which said Assignment was duly filed herein, and whereupon an Amended Summons and Complaint were duly filed herein, and then withdrawn for

service, and delivered to the Sheriff of Hennepin County for Service;

that said Sheriff on August 24, 1959, duly made his Return that said Defendants, and each of them, could not be found in his said County;

that on said date an Affidavit for Attachment in due form was filed with said Clerk, and an Order made by this Court, and filed herein on August 24, 1959, for the issuance of Writs of Attachment to Sheriff of the County of Fillmore, and other counties, relative to property within the State and the County of said Sheriff of Fillmore County, belonging to said Defendants, and each of them, as non-residents;

that on said date the Clerk of Court duly issued a Writ of Attachment to the Sheriff of Fillmore County; and that at that time the files and records herein fully disclosed that said Defendants, and each of them, were not residents of the State of Minnesota; but in fact were residents of the State of Iowa, and resided at Decorah, Iowa, and could not be then served in the State of Minnesota;

that on August 25, 1959, the Sheriff of said County of Fillmore duly attached certain property in his said County as

belonging to said Defendant Rosalia Lamm McAndrews, and also served certain garnishment papers, whereby this Court became vested with jurisdiction to the extent of property so attached and garnished;

and that the Return of said Sheriff of Fillmore County has been duly filed herein, together with the certificate of the Register of Deeds for said County of Fillmore;

that on September 9, 1959, an Affidavit for Publication of the Summons, or for Substituted service, in due form, was filed herein, and whereupon this Court on September 19, 1959, issued an Order for Substituted Service;

that the Summons and Complaint herein were then withdrawn from the Clerk's file for service, and forwarded to the Sheriff of Winneshiek County, Iowa, for service;

that on September 21, 1959, Al. R. Etteldorf, Jr., a deputy Sheriff for said County made due and personal service upon each of said Defendants, as set forth in the due Affidavit of Personal Service by said Al. R. Etteldorf, Jr., filed with the Clerk of this Court.

that on October 29, 1959, and more than twenty (20) days after the personal service of said Summons and Complaint upon each of said Defendants, an Affidavit of Default in due form was made, and thereafter filed with the Clerk herein, and that said Defendants, and each of them, at the time of the making and filing of said Affidavit of Default had failed and neglected to appear and answer in said action;

that on December 8, 1959, and prior, and again on December 28, 1959, and again on December 30, 1959, said Defendant Rosalia Lamm McAndrews and said Defendant Anne Lamm Haagensen appeared in said action within the meaning and the conditions of Rule 5:01, of the Minnesota Rules of Civil Procedure; and that the Order of the above-named Court, made at Special Term on December 30, 1959, overruling objections to the jurisdiction of the Court herein, has been entered and filed, nunc pro tunc; and

that said Defendants have no known attorney within the State of Minnesota;

and that more than twenty (20) days have elapsed since the said Defendants, and each of them, received copies of the Summons and Complaint herein, and also since the garnishment and attachment proceedings

herein; and that said Defendants, and each of them at all times prior to December 1, 1959, failed and neglected to serve or enter an answer or any other pleading raising a fact issue with respect to the allegations of the Complaint and the pleadings of the Plaintiff herein;

that more than twenty (20) days have elapsed since the appearance of said Defendants in this Court on December 30, 1959; and that said Defendants, and each of them, to the date hereof, have failed and neglected to serve or enter an answer, or any other pleading raising a fact issue with respect to the allegations of the Complaint and the pleadings of the Plaintiff herein, and by reason thereof the Plaintiff is entitled to judgment by default for the amount demanded in the Summons and Complaint herein;

that Plaintiff on September 26, 1961, filed an Affidavit of Default herein in due and proper form;

that at all times prior to September 25, 1961, said Defendant Rosalia Lamm McAndrews and said Defendant Anne Lamm Haagensen, each, failed and neglected to serve or enter an Answer, or other pleadings, raising a fact issue with respect to the allegations of the pleadings of Plaintiff herein, or denying the claims of Plaintiff for the damages set forth in

the Summons and Complaint and pleadings of the Plaintiff herein; and

that pursuant to the statute and the rules of the Court in such cases made and provided, the Plaintiff is entitled to judgment as demanded in said Summons and Complaint and pleadings herein by reason of such default; and the Court having jurisdiction herein as aforesaid, and having heard the evidence adduced on behalf of said Plaintiff, both on December 2, 1959, and on the date hereof; and upon all the files and records in said action, and being duly advised in the premises; and after due consideration had, makes the following:

FINDINGS OF FACT

1. That the Allegations of the Complaint and pleadings of the Plaintiff herein are true;

2. That Clifford F. Hansen, the Plaintiff herein, at all the times set forth in the pleadings herein, was and is an attorney at law, duly and regularly admitted to practice as such in the Courts of the State of Minnesota, and with offices in the Midland Bank Building, in Minneapolis, Minnesota;

3. That Albert M. Anderson, at all the times set forth in the pleadings herein,

was and is an attorney at law, duly and regularly admitted to practice as such in the Courts of the State of Minnesota, and with offices in the Midland Bank Building, in Minneapolis, Minnesota, and has duly assigned all his interest herein to the Plaintiff;

4. That Rosalia Lamm McAndrews and Anne Lamm Haagensen, the Defendants herein, now each reside, and for many years, and continuously since the institution of these proceedings, have resided in Decorah, Iowa, and each is and for many years past continuously, has been a resident of the State of Iowa; and as such non-residents there was garnished and also attached in this action certain property claimed to be owned by said Defendants, and whereby this Court prior to December 1, 1959, became vested with jurisdiction over the property so garnished and also attached;

5. That beginning in about June, 1957, said Defendants, and each of them, retained and employed said Albert M. Anderson and said Clifford F. Hansen, as attorneys to render legal services and to give legal advice and assistance relative to litigation then pending, and legal rights then existing and claimed by Defendants to exist with respect to properties in the State of Iowa, and the State of Minnesota, and the State of North Dakota,

and the State of Nebraska, and also certain alleged tortious acts claimed done by one Maxwell Krause, and others, with respect to the legal rights of said Defendants, and each of them; and that said Anderson and said Hansen, as such attorneys, continued to well and faithfully render and perform such legal services until July 31, 1959, when the same were wrongfully and without cause terminated by said Defendants, and certain attorneys in Iowa, acting for said Defendants;

6. That by and through said legal services and assistances thus rendered and performed by said Anderson and said Hansen, the said Defendants made large and substantial recovery of assets claimed by them, and which said Defendants would not have recovered without said services and legal assistance;

7. That said Defendants, and each of them, are indebted to said Anderson and said Hansen, as such attorneys, on account of such legal services and assistance, well and truly rendered and performed by them during the aforesaid time, of the fair and reasonable value exceeding Ten Thousand Dollars ($10,000.00), with additional fees due in connection with litigation now pending in the District Court for Olmsted County, Minnesota, which cannot presently be determined;

8. That said Defendants and each of them are also indebted to said Anderson and said Hansen, as such attorneys, on account of legal expenses in the amount of Eight Hundred Fifty Dollars, ($850.00), incurred by said attorneys for and in behalf of said defendants, and each of them, upon which payments of Five Hundred Fifty Dollars ($550.00) have been made, with a balance of Three Hundred Dollars ($300.00) thereon remaining unpaid;

9. That said Defendants, and each of them, at all times prior to December 1, 1959, failed, neglected and refused to pay the aforesaid fees and expenses;

10. That the amounts due and owing by said Defendants, and each of them, to Plaintiff, for principal and interest totaled on December 2, 1959, the sum of Ten Thousand Three Hundred Dollars, ($10,300.00), for which judgment together with costs and disbursements, was entered herein by the Clerk on January 7, 1960, for Ten Thousand Six Hundred Thirty-four and 32/100's Dollars, ($10,634.32), upon which said Defendants are entitled to credit of One Hundred Eight and 40/100s Dollars, ($108.40), as of February 4, 1960, and of Four Thousand Five Hundred Fifty-eight and 12/100's Dollars ($4,558.12), as of April 11, 1960, and leaving on said date a balance of Five Thousand Nine Hundred Sixty-seven and

80/100s Dollars, ($5,967.80), and interest thereafter as allowed by law, due and owing by said Defendants, and each of them, to the Plaintiff;

11. That on November 17, 1959, and on December 8, 1959, and again on December 28, 1959, and again on December 30, 1959, said Defendants Rosalia Lamm McAndrews and said Defendant Anne Lamm Haagensen, each, and their attorney Everett W. Gross, appeared in said action within the meaning and conditions of Rule 5:01, of the Rules of Civil Procedure for the District Courts of Minnesota; that the Order of the Court, made at Special Term on December 30, 1959, overruling objections to the jurisdiction of the Court herein, as may be said Defendants Rosalia Lamm McAndrews and said Anne Lamm Haagensen, and their attorney, Everett W. Gross, has been entered and filed, nunc pro tunc; that Plaintiff, after the time of filing said Order, nunc pro tunc, and prior hereto, has filed an Affidavit of Default in due form; and that Plaintiff, pursuant thereto, has duly moved the Court for the entry of Judgment for the amount so due and owing, as aforesaid; and

12. That the amount now remaining due and owing by said Defendant Rosalia Lamm McAndrews and said Defendant Anne Lamm Haagensen, and each of them, to Plaintiff,

for the damages set forth in the pleadings of Plaintiff herein, is the sum of Five Thousand Nine Hundred Sixty-seven and 80/100s Dollars, ($5,967.80), and interest as allowed by law from April 11, 1960; and that Plaintiff is entitled to have entered herein against said Defendants a personal judgment for said amount of principal and interest, as allowed by law.

CONCLUSIONS OF LAW

That by reason of and pursuant to the foregoing Findings of Fact, the Plaintiff is entitled to the Judgment of this Court: ADJUDGING AND DECREEING, that Clifford F. Hansen, as Plaintiff herein, do have and recover of and against said Rosalia Lamm McAndrews and said Anne Lamm Haagensen, and each of them, judgment in the sum of Five Thousand Nine Hundred Sixty-seven and 80/100s Dollars ($5,967. ($5,967.80) and interest thereon from April 11, 1960, as allowed by law.

LET JUDGMENT BE ENTERED ACCORDINGLY

Dated at Minneapolis, Minnesota, this 26th day of September, 1961.

BY THE COURT

/s/ LESLIE L. ANDERSON
District Judge

Requested:
(s) Clifford P. Hansen

(Certified, Jan. 18, 1967)

F I L E D
September 26, 1961
Philip G. Schmidt
Clerk - M. J.
Pahey, Deputy.

APPENDIX C
(Iowa Record p 107)
Exhibit No. 8 - WRITTEN APPEARANCES BY DEFENDANT. Special Appearance by Rosalia Lamm McAndrews, Pro Se, and Anne Lamm Haagensen, Pro Se, filed in Minnesota Action on November 17, 1959.

Comes now the Defendants, Rosalia McAndrews, Pro Se, and Anne Lamm Haagensen, Pro Se, filed in Minnesota action on November 17, 1959.

Comes now the Defendants, Rosalia Lamm McAndrews and Anne Lamm Haagensen and hereby appear specially for the sole purpose of attaching the jurisdiction of the Court, and state:

1. That this Court has no jurisdiction in this case for the following reasons:

2. That the Amended Complaint of Plaintiff shows and states on its face that the Plaintiff is a resident of Minneapolis, Minnesota, and that the Defendants are residents of Decorah, Iowa.

3. That in fact the Defendants Rosalia Lamm McAndrews and Anne Lamm Haagensen are residents of Decorah, Iowa.

4. That said Amended Complaint fails to show that Plaintiff can or has obtained jurisdiction over these Defendants, whom

he admits are residents of Decorah, Iowa.

5. That the affidavit of Rosalia Lamm McAndrews, marked Exhibit "A" and of Anne Lamm McAndrews, marked "Exhibit B" are attached hereto in support of said grounds and made a part hereof.

6. That the purported service of notice is void for all the reasons stated above.

WHEREFORE: the Defendants ask that said service be quashed, and that this action be dismissed at Plaintiff's cost.

Signed by Rosalia Lamm McAndrews, Pro Se; and by Anne Lamm Haagensen, Pro Se.

Exhibit "A" omitted: Affidavit by Rosalia Lamm McAndrews.

Exhibit "B" attached: by Anne Lamm Haagensen.

I, Anne Lamm Haagensen, being first duly sworn, on oath do depose and say that:

I am now and have been for long years past, a resident of and domiciled in Decorah, Winneshiek County, Iowa.

That I have never during recent years and do not now live in the State of Minnesota and am not a resident of the State

of Minnesota.

That this affidavit is made and executed in support of the grounds stated in the attached SPECIAL APPEARANCE, in Clifford F. Hansen vs Rosalia Lamm McAndrews and Anne Lamm Haagensen, file No. 548-060.

That no notice of any alleged cause of action in said action was ever served on me in the State of Minnesota.

That the facts alleged in the attached Special Appearance and each and every of the statements made in this affidavit are true and correct and state the true facts.

Subscribed and sworn to by Anne Lamm Haagensen, on November 13, 1959, before Walter D. Gross, Notary Public, Winnishiek County, Iowa. Notarial Seal.

Exhibit No. 9 - AMENDMENT TO SPECIAL APPEARANCE, signed by Rosalia Lamm McAndrews, Pro Se; and by Anne Lamm Haagensen, Pro Se; and filed in the Minnesota action on December 8, 1959.

Comes now the Defendants Rosalia Lamm McAndrews and Anne Lamm Haagensen, and appearing specially for the sole purpose of attacking the jurisdiction of the Court, hereby amend their Special Appearance now on file in this Court by

adopting such Special Appearance in toto, and adding thereto:

7. That the Defendants herein own no property, real or personal, in Hennepin County, Minnesota, and this Court can not obtain jurisdiction over these foreign Defendants when they own no property in the forum of the Court.

8. That this action is not brought on any valid attachment on any property of these Defendants in any other county in Minnesota.

9. That any pretended or purported service of notice on these Defendants is of no legal efficacy, and void.

10. That the affidavits of Defendants Rosalia Lamm McAndrews and Anne Lamm Haagensen in support of said grounds are hereto attached and made a part hereof and marked Exhibits A and B respectively.

WHEREFORE, the Defendants ask that said pretended service be quashed and that this action be dismissed at Plaintiff's cost.

Signed: Rosalia Lamm McAndrews, Pro Se; and Anne Lamm Haagensen, Pro Se.

Exhibit A - Affidavit by McAndrews - omitted.

Exhibit B - Affidavit by Anne Lamm Haagensen.

I, Anne Lamm Haagensen, being first duly sworn, do depose and say on oath, that I am one of the Defendants in Clifford P. Hansen vs Rosalia Lamm McAndrews and Anne Lamm Haagensen, Minnesota District Court, Hennepin County.

That I own no property, real or personal, in Hennepin County, Minnesota.

That the allegations in the attached "Amendment to Special Appearance" are true and correct.

Subscribed and sworn to by Anne Lamm Haagensen on November 21, 1959, before Walter D. Gross, Notary Public, Winneshiek County, Iowa. Notarial Seal.

APPENDIX D
(Record, p 112.)
Exhibit No. 10 - ORDER BY JUDGE KNUTSON dated September 22, 1961, filed in said Minnesota action on September 22, 1961.

It appearing to the Court, and the undersigned Judge thereof, from the files and records herein, that on the 30th day of December, 1959, the above-named Defendants, by Attorney Everett W. Gross, appeared before this Court and moved the Court to dismiss the above entitled action, and which said motions were opposed by Plaintiff, and that the Court after hearing arguments by the parties denied said motions; and that the Plaintiff is entitled to the relief set forth in the moving papers dated and filed on the 21st day of September, 1961; and the Court being duly advised in the premises, and upon motion of Plaintiff in open Court, it is hereby: ORDERED, that the motions of Defendants, heard and considered by the Court, and the undersigned Judge, on December 30, 1959, and there and then denied, be evidenced by this written ORDER, denying said Motions of Defendant, which it appears from the Record herein were as follows:

(Filed November 17, 1959)

1. That this Court has no jurisdiction of this case for the following reasons:

2. That the Amended Complaint of Plaintiff shows and states on its face that the Plaintiff is a resident of Minneapolis, Minnesota, and that the Defendants are residents of Decorah, Iowa;

3. that in fact the Defendants Rosalia Lamm McAndrews and Anne Lamm Haagensen are residents of Decorah, Iowa;

4. that said Amended Complaint fails to show that Plaintiff can or has obtained jurisdiction over these Defendants, whom he admits are residents of Decorah, Iowa;

5. that the Affidavit of Rosalia Lamm McAndrews marked "Exhibit A", and of Anne Lamm McAndrews (error, Haagensen), marked "Exhibit B", are attached hereto in support of said grounds and made a part hereof;

(Filed December 8, 1959)

8. That this action is not brought on any valid attachment of any property of these Defendants in any other county in Minnesota;

9. that any pretended or purported service of notice on these Defendants is of no legal efficacy, and void;

10. that the affidavits of Defendants Rosalia Lamm McAndrews and Anne Lamm

Haagensen in support of said grounds are hereto attached and made a part hereto and marked Exhibits A and B respectively;

with this Order issued nunc pro tunc, and to be duly filed with the Clerk of this Court.

Dated this 22nd day of September, 1961.

BY THE COURT /s/ THEODORE B. KNUDSON, District Judge.

APPENDIX E

MINNESOTA CONSTITUTION AND RULES OF CIVIL PROCEDURE.
(Iowa Record, p 91)
Exhibit No. 2 - Constitution of Minnesota, Sec. #5, subsequent to Nov. 6, 1956, provides as follows:

#5 - Jurisdiction of district court
Sec. 5. The district court shall have original jurisdiction in all civil and criminal cases, and shall have such appellate jurisdiction as may be prescribed by law. Adopted Nov. 6, 1956.

Exhibit No. 3 - Rule 5:01, Rules of Civil Procedure for the District Courts of Minnesota; Minn. Stat. Ann. Vol. 27-A Court Rules, page 79; West Publishing Co. 1958.

5:01 Service; When required; Appearance. Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar papers shall be served upon each of the parties affected thereby, but no service need be made on parties in default for failure

to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of Summons in Rule 4.

A party appears when he serves or files any paper in the proceeding.

Minnesota Rules of Civil Procedure, Rule 4:04, 1958 Minn. Stat. Ann. Vol. 27-A, page 76 (then in effect).

"Such service", (by publication or personal service without the state),"shall be sufficient to confer jurisdiction:"

1. (re: resident defendant).

2. When the plaintiff has acquired a lien upon property or credits within the state by attachment or garnishment; and

(a) the defendant is a resident individual who has departed from the state, or cannot be found therein; or

(b) the defendant is a non-resident individual, or a foreign corporation, partnership or association;

3. (re: divorce).

Note: Said statute contained no provision for a special appearance to question

the jurisdiction of the court over the subject matter in Minnesota.

Also, in Minnesota, by the Code, special appearance has been abolished. Anderson vs Mikel Drilling Co. 1960, 257 Minn. 487; 102 NW (2) 293.

Note: There is no provision for special appearance since adoption of the present code.

APPENDIX F

ABSTRACT OF VARIOUS PAPERS RE: SUMMARY JUDGMENT, in addition to Appendices A to E, inclusive.

1. Affidavit of Personal Service. (Iowa Record, page 104).
Exhibit No. 5 - Abstracted here. Affidavit of Personal Service of Summons and Complaint upon both defendants in Decorah, Iowa, on September 21, 1959, by Al. R. Etteldorf, Jr., a deputy sheriff. Subscribed and sworn to and notarial seal.

2. Application of Foreign Attorney. (Iowa Record, page 105).
Exhibit No. 6 - Abstracted here. On November 17, 1959, Everett W. Gross, representing himself as a Montana attorney, filed an Application, asking "permission of this Court to act as counsel for the above defendants in the above entitled matter."

3. Order Approving Application. (Iowa Record, page 106).
Exhibit No. 7 - Abstracted here. Judge Levi M. Hall, of the Minnesota Court, approved said Application of Attorney Gross, and evidenced same by a nunc pro tunc Order, filed October 5, 1961.

4. Affidavit of No Payments.
(Iowa Record, page 12)
Item No. 22 - Abstracted here. Defendants have failed, neglected and refused to pay said Minnesota Judgment of $6,489.83 and interest; and that said sum is still due and owing thereon.

5. Motion re: Summary Judgment.
(Iowa Record, page 41).
Item No. 27 - Motion by Plaintiff, filed on January 15, 1969, asking immediate determination and allowance of Motion for Summary Judgment, and for finding as follows:

1) Said Minnesota Court is a constitutional court, with jurisdiction to enter the foreign judgment involved;

2) Minnesota Rules of Civil Procedure for District Courts contain no provision for a special appearance;

3) Defendant entered a voluntary appearance;

4) Defendant invoked the jurisdiction and powers of said Minnesota Court;

5) Said Minnesota Court overruled all objections made by Defendant.

APPENDIX G

DECISION OF IOWA TRIAL COURT
(Iowa Record, p 41)
Item No. 28

IN THE DISTRICT COURT OF THE
STATE OF IOWA IN AND FOR
WINNESHIEK COUNTY
No. 18-126

Clifford F. Hansen,
Plaintiff,
vs
Anne Lamm Haagensen,
Defendant.

Findings of Fact, Conclusions of Law, Judgment and Decree, filed April 16, 1969.

Trial held on February 24, 1969, with attorneys of record appearing.*** The only defendant remaining in the case at the time of trial was Anne Lamm Haagensen.

The Court, having heard the evidence, having examined the briefs and arguments of counsel, and being fully advised in the premises, makes the following:

FINDINGS OF FACT

There is no disagreement that there are only two issues to be determined by the Court in this matter:

No. 1, does this Court have the right to inquire into the jurisdictional aspects of the Minnesota Judgment sued on by Plaintiff; and

No. 2, if so, did the Minnesota Court have jurisdiction of the defendant, Anne Lamm Haagensen, at the time a judgment was entered against her in the Minnesota courts on December 2, 1959.

Regarding the first point in issue, this has been presented to the Iowa courts previously, and in the case of McKee vs McKee, 32 NW 2nd 379, the Iowa Court said, in referring to Article IV, Section 1, of the U.S. Constitution, having to do with full faith and credit, as follows:

> "A judgment in one state is conclusive upon the merits in every other state, but only if the Court of the first state had power to pass on the merits, - had jurisdiction, that is, to render the judgment."

Also in the case of Hetherington vs Roe, 35 NW 2nd 14, the Iowa Court said:

"We think there can be little doubt

that in considering a prior adjudication by a sister state, this Court can inquire into jurisdiction of the person as well as the subject matter."

Also, the courts of Minnesota have passed on a like situation, and in the case of Kummiskey vs Kummiskey, 107 NW 2nd, 865, the Minnesota Court stated:

"That a foreign divorce decree could be collaterally attacked where defendant was not personally served with process in the jurisdiction of the forum."

Regarding the actual facts of what occurred in the Minnesota courts, there is little dispute. The only real issue is what effect the certain special appearance filed on behalf of the defendant Haagensen in the Minnesota court will have upon jurisdiction of her.

On August 21, 1959, the Plaintiff filed a complaint in the Hennepin County, Minnesota, District Court. He therein alleged that the defendant Haagensen was a resident of the State of Iowa, but owned property inside the State of Minnesota. On August 24, 1959, a writ of attachment was issued. On August 25, 1959, the writ of attachment was served against property of Rosalia Lamm McAndrews; however, no property of Anne Lamm Haagensen was found

within the State of Minnesota. On September 21, 1959, the defendant Haagensen was served with personal service within the State of Iowa. On October 29, 1959, the plaintiff filed an affidavit of default, in which he referred to attachment proceedings; however, he did not set out therein that no property of the defendant Haagensen was found in Minnesota. In fact, in examining the papers, the Court has before it, the Court can find no return of service by the Sheriff, showing that no property of the defendant Haagensen was found within the State of Minnesota; however, in his testimony plaintiff admits that at no time was any property of the defendant Haagensen attached within the State of Minnesota. On November 9, 1959, plaintiff sent by mail to defendants notice that motions for default would be presented to the Court on November 18th. On November 17th, a paper entitled "Special Appearance" was filed pro se by the said defendant Anne Lamm Haagensen, in the Hennepin County Court. On the same date an application by one Everett W. Gross, a Montana attorney, was filed asking permission to appear in the Minnesota Court.

The special appearance of the defendant Haagensen specifically sets forth that she was appearing for the sole purpose of attaching the jurisdiction of the Court in that she was not a resident of the

State of Minnesota. On December 2, 1959, a default judgment was entered against the defendant Haagensen. Contained in said default judgment was the statement that she had not filed an answer or general appearance. Further, contained in said judgment was this statement:

> "Whereby this Court became vested with jurisdiction to the extent of property so attached and garnished."

See lines 7, 8, and 9 on Page 2 of said Default Judgment.

On December 8th, the special appearance previously filed was amended to set forth that said defendant Haagensen owned no property in Hennepin County, Minnesota.

On April 11, 1960, a Sheriff's sale was held of the property attached of Rosalia Lamm McAndrews and this amount credited on a judgment entered in the amount of $10,300 with interest thereon.

Following this several affidavits were filed by the plaintiff Hansen and non pro tunc orders entered to the effect that a hearing was held on the special appearance and the request for foreign attorney to appear on December 30, 1959, and the special appearances were overruled, and Gross was given the right to appear. On September 25, 1961, another affidavit of

default was filed by the plaintiff, herein, in which he stated that both defendants McAndrews and Haagensen owned property within the State of Minnesota, and an attachment against their property was held, and this was based on Clerk's default judgment entry dated September 26, 1961, in the amount of $6,489.83, which is the amount sued on herein.

The last non pro tunc order was signed October 5, 1961, in which the court attempted to cover matters that occurred over two years prior to that time.

The only real issue left for the Court at this point is whether the special appearance, filed by Defendant Haagensen, amount to a general appearance in the Minnesota Court, and therefore subjected her to a personal judgment, which was entered against her. It is the position of the plaintiff that any appearance in the State of Minnesota is considered a general appearance by the Minnesota courts, and therefore subjects one to personal jurisdiction.

Rule 12:02 of the Minnesota Rules of Civil Procedure provides:

> ". . . no defense or objection is waived by being joined with one or more defenses or objections in a responsive pleading or motion."

There would be little argument that the Minnesota courts have stated that the old distinction between general and special appearances has been abolished in the State of Minnesota. See Vol. 1, Minnesota Rules Practice, page 309 - Anderson vs Mikel Drilling Company, 102 NW 2nd 293. However, both these authorities point out the fact that after questioning jurisdiction of the Court, the Minnesota rules provide that the losing party can plead over, can defend and try his case on the merits, and not waive the jurisdictional issue raised. In the Mikel case, supra, the Minnesota Court stated this:

> ". . . it is now well settled that where the defense of lack of jurisdiction is timely asserted, it is not waived by proceeding with a trial on the merits . . . since the defendants there properly challenged the jurisdiction of the court by a motion to dismiss, their subsequent appearances did not constitute a waiver of the defense."

In State vs Tolberg, 140 NW 2nd 845, the Minnesota Court pointed out that a paternity action is governed by the Rules of Civil Procedure. There the Minnesota Court said:

". . . We have held in a number of cases that when a party invokes the power of the court for any purposes except to determine jurisdiction, he makes a general appearance . . . only where defendant has promptly and without avail moved to dismiss may he safely proceed to trial."

In State vs Rust, 98 NW 2nd 271, which is a case seven years after the amendments to the Minnesota Rules of Civil Procedure, the Minnesota Court quoted with approval 1 Dunnell Digest, 3rd Edition, Section 479, which stated:

"An appearance for any other purpose than to question the jurisdiction of the Court is general and gives the Court jurisdiction over the person. No special appearance can be made except to raise jurisdictional question . . . In determining whether appearance is general or special, the purpose for which it is made should be considered rather than what the party has labeled it."

In Spage vs Glasier, 137 NW 549, the Minnesota Court referred to the Kummiskey Case, supra, and stated as follows:

"This Court in the Kummiskey case said that the accepted purpose of a special appearance is to challenge the

jurisdiction of the court over the person of the defendant."

Rule 12 of the Minnesota Rules of Civil Procedure is substantially the same as Rule 12 of the Federal Rules of Civil Procedure. Dunnell, 3rd Ed. Minnesota Digest, page 475-480; 2 Moore Federal Practice, sec. 2262, Barron & Holtshoff, Federal Practice and Procedure, Volume 1-A, page 353, Sec. 355.

In Volume 10, Dunnell Minnesota Digest, 3rd Edition, page 377, Section 5207, it is stated as follows:

"When a responsive pleading is required, the pleader may present 'every defense in law or fact' or objection in the responsive pleading, Rule 12:02. The objection of lack of jurisdiction over the person which formerly was required to be made by special appearance is not waived by joinder with defenses to the merits or even averment of counterclaim or cross-claim. The term 'special appearance' no longer has legal significance. Rules 12:07, 12:08.

"The pleader may, however, prefer to raise by motion certain defenses or objections which he believes will be sustained, and this obviates the need for pleading to the merits, the disposition of which will aid in the preparing of

his pleadings. Rule 12:02 provides six specific defenses which may be raised by motion before pleading . . .

"If a motion is made on any one of such defenses or objections, all other defenses or objections provided under Rule 12 must be raised or joined with this motion."

Rule 12:02 provides that the following may be raised by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person.

In Volume X, Dunnell Minnesota Digest, supra, page 131, Section 4967, it states as follows:

"A court must acquire jurisdiction over the person of a defendant before it can render a judgment in personam against him. A judgment in rem reaches only property within the jurisdiction of the court rendering it."

The Court therefore specifically finds that at the time judgment was entered against the Defendant Haagensen originally by the Minnesota Court, on December 2, 1959, the Minnesota Court did not have in personam jurisdiction of said defendant, which is recognizable by the courts of the State of Iowa.

The Court further specifically finds that no action by defendant Haagensen, nor affidavits of non pro tunc orders entered by either the Clerk of Court or the district court judges of Minnesota were valid in granting in personam jurisdiction against the defendant Haagensen.

The defendant Haagensen filed a counterclaim against the plaintiff for the amount of $7,000.00; however, no evidence was introduced at the trial to support the allegations of said counterclaim. The Court, therefore, specifically finds that the defendant Haagensen has failed to sustain her burden of showing by a preponderance of the evidence the damages claims in said counterclaim, and this counterclaim should be dismissed.

CONCLUSIONS OF LAW

The Court finds as a conclusion of law that it has jurisdiction of the parties to this action and of the subject matter thereof, and that there should be a Judgment and Decree in accordance with the Findings of Fact as hereinbefore set forth.

JUDGMENT AND DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the petition filed by the Plaintiff herein be and it is hereby

dismissed, and the court costs of this action be assessed against the Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the counterclaim filed by the defendant Anne Lamm Haagensen fail for lack of proof, and it be hereby dismissed.

Dated at Decorah, Iowa, on this 15th day of April, 1969.

BY THE COURT:

/s/ Joseph C. Keefe
Joseph C. Keefe, Judge, 13th Judicial District of Iowa.

Filed: April 16, 1969.

APPENDIX H

IN THE SUPREME COURT OF IOWA

CLIFFORD F. HANSEN,)
Appellant,) Filed June 23,
vs) 1970.
ANNE LAMM HAAGENSEN,) 105
Appellee.) 53988

Appeal from Winneshiek District Court - Joseph C. Keefe, Judge.

Plaintiff sought a summary judgment for attorney fees based upon a foreign judgment. The trial court dismissed the petition holding there was no jurisdiction to render the foreign judgment, and plaintiff appeals. Affirmed.

Clifford F. Hansen, of Minneapolis, Minnesota, pro se. Thomas C. Lynch, of Decorah, for appellee.

LARSON, J.

On July 26, 1965, plaintiff Clifford F. Hansen sought a summary judgment for the balance of a claimed attorney fee and for costs against defendant Anne Lamm Haagensen in the District Court of Iowa. This action was based upon a purported default judgment rendered by a Minnesota court on the 26th day of September 1961. The trial court dismissed plaintiff's petition on the ground that this Minnesota

judgment was rendered without personam jurisdiction over defendant, and plaintiff appeals. We affirm.

The primary question presented by this appeal is whether personal jurisdiction of this nonresident defendant had been acquired in the proceeding which resulted in the alleged September 1961 judgment sued upon. Perhaps a secondary question, which received considerable attention in the trial court, is whether the Iowa court can determine such a question in view of the judgment rendered by the Minnesota district court.

Although the voluminous record, filed copies, and affidavits do not comply with our appellate rules, we have carefully reviewed all of them and the trial court's decision herein. As we understand the prior proceedings, the plaintiff and his law partner rendered considerable legal services to defendant and her sister in an estate matter. Subsequent to their dismissal plaintiff acquired his partner's claim and brought suit against Mrs. Haagensen and her sister, Mrs. McAndrews, for unpaid attorney fees and advanced costs in the sum of $10,350. This action, aided by an attachment of real property in Minnesota, was commended on August 21, 1959. Published or substituted service in Minnesota was made on September 9, 1959,

and personal services on defendants in Decorah, Iowa, was made on September 21, 1959. No answer or pleadings by defendants were filed, and on December 2, 1959, plaintiff obtained a default judgment against them in the sum of $10,300 with interest and costs. This quasi in rem judgment recited in part, "This Court became vested with jurisdiction to the extent of property so attached and garnished; ***." The effect of such a judgment is not to impose a personal liability or obligation upon anyone and not to affect the interests of all persons in a thing but to affect the interests of particular persons in a thing. Such a judgment may be rendered where the jurisdiction of the court which renders it is based on the court's power over the thing, although it does not have power over the persons whose interests are affected. Restatement of the Law of Judgments, ch. 1, p. 7.

Subsequent to this judgment defendant filed what was denominated a special appearance and motion to dissolve the judgment as to her because inter alia she had no property in Minnesota. This motion was heard and considered by the court and the same was denied. Nothing further was done and no appeal was taken from the December 2 judgment quasi in rem.

Although the property attached in the original action was subsequently sold and the proceeds applied upon the judgment, nothing was done in the matter for about 17 months thereafter, too late for further proceedings. (See Minnesota Rules of Civil Procedure, 60.02). A motion was then filed by plaintiff on September 25, 1961, supported by his own affidavit, asking that an order be entered "that on the files and records herein, together with the evidence presented to the Court, that Findings of Fact, Conclusions of Law, and Order for Judgment be duly entered in favor of Plaintiff and against the above-named Defendants for judgment for the amount remaining due and owing upon the damages set forth and demanded in the pleadings of Plaintiff herein; ***."

On September 26, 1961, the court did render judgment against defendant as prayed for the amount not satisfied by the sale of property attached in the sum of $5,967.80 plus interest from April 11, 1960.

An examination of the record and the September 26 judgment reveals that it purports to render a personal judgment against defendant for that sum, although no new notice was had upon her. The Iowa District Court dismissed this summary action on the basis that no jurisdiction

had been obtained of defendant's person and rejected her counterclaim for damages in the sum of $7,000 for the failure to sustain her burden to prove those damages. Plaintiff appealed and defendant did not. We are inclined to agree with the trial court and find in this record nothing to sustain a finding of jurisdiction of her person which would support the decree rendered by the Minnesota court on September 26, 1961, and compel recognition by the courts of Iowa.

I. It is true, as appellant contends, that the Minnesota courts may determine whether an appearance in action brought in Minnesota is general or special and that such determination under Minnesota rules is binding upon the Iowa courts. Nevertheless, as to the issue of whether jurisdiction of a person was ever obtained in an action or matter purportedly adjudicated by a foreign court, the Iowa courts may review.

The trial court reviewed a number of Minnesota authorities which it believed permitted the filing of special appearances to contest the jurisdiction of the court, citing 1B Dunnell Minnesota Digest, 3rd Edition, Sec. 479, and Vol. 10, Sec. 4967, relating to Minnesota Rules of Civil Procedure, in support of its view that the defendant's special appearances here did not confer jurisdiction

of her person in this original action. Be that as it may, we are inclined to the view that due process is not violated by a determination by a state court that under its rules of civil procedure the appearances made prior to final judgment may amount to a general appearance no matter how labeled. Had it appeared here that these defendant special appearances had been made before the December 2 judgment and the court had rendered a personam judgment thereon, we would be inclined to hold that judgment is enforceable in Iowa. However, that does not appear to be the case before us. It appears here that the judgment rendered December 2 was quasi in rem and that no personal jurisdiction had been acquired prior thereto. Defendant's appearances thereafter relate to the prior concluded proceedings and are not to be considered as retroactive to justify a new judgment without proper reopening procedure or the commencement of a new action and due notice to defendant.

It is appellee's contention that, since no personal appearance had been made or recognized in the original action prior to the December 2 judgment, judgment was final and, when no appeal was taken or reopening asked pursuant to R.C.P. 60.02, concluded the proceedings. She further contends an additional or new notice and pleadings which were prior to

her alleged appearances to set aside the quasi in rem judgment where necessary to secure a personal judgment for the alleged deficiency. This not being shown herein, the September 26, 1961, judgment sued upon in Iowa, she claims, was invalid anywhere.

Apparently appellant concedes he had not obtained personal jurisdiction of defendant when the quasi in rem judgment was obtained on December 2, 1959, that he did not seek to reopen the matter for over 17 months, and that he commenced no new action or served no new notice on her thereafter. It may well be that, had the December 2 default judgment been set aside, the defendant's attempted special appearance under Minnesota rules, especially 5.01, would have constituted a general appearance and plaintiff could then have proceeded to obtain a new judgment which would have been recognized as one in both quasi in rem and personam. But this he did not do. Unless we consider defendant's appearance subsequent to the final quasi in rem judgment retroactive along with a plaintiff timely request to modify the judgment, to acquire personal jurisdiction of defendant would have required a new proceeding and notice to her.

We know of no rules and none were called to our attention which would

permit a subsequent appearance of this kind to be considered retroactive, or allow a personam judgment for the amount of the quasi in rem judgment unsatisfied by the sale of property attached and levied upon, without a reopening and due notice thereof.

11. The requirement of full faith and credit in the constitution relied upon here is to be read and interpreted in the light of well-established principles of justice, protected by other constitutional provisions which it was never intended to modify or overrule. 47 Am. Jur. 2d, Judgments, Sec. 1221, p. 227. It has often been held that under that rule no state may obtain in the tribunals of another jurisdiction full faith and credit for a judgment which has been rendered in a proceeding wanting in due process of law enjoined by fundamental law. Due process requires that no other jurisdiction shall give effect, even as a matter of comity, to a judgment elsewhere acquired without due process.

In 47 Am. Jur. 2d, Judgments, Sec. 1222, it is also stated:

"Due notice of the institution or pendency of an action, or an appearance which presupposes notice, is an indispensable prerequisite to the rendition of any judgment which the courts of another

state are, under the Constitution and laws of the United States, bound to recognize. *** As a condition to recognition of a judgment rendered by a court of a foreign country, it is also required that the judgment shall have been rendered under a system of law reasonably assuring notice and a hearing."

III. Of course, the burden is upon one contending there was no proper notice upon which the purported judgment was rendered in a foreign jurisdiction. Hetherington vs Roe, 239 Iowa 1355, 1359, 35 NW 2d 14, 17. Therein we said: "The full faith and credit clause of the constitution is binding upon courts of sister states, but jurisdiction may be inquired into. Defendant argues that a judgment without jurisdiction of the person or the subject matter is not entitled to recognition or enforcement in another state, or to the full faith and credit provided for in the Federal Constitution. We may assume this statement of the law to be correct", citing Sullivan vs Kenney, 148 Iowa 361, 376, 126 NW 349.

In Hetherington, as here, the contention was made that when the judgment in question was rendered there was no action pending in the district court. There the controversy was as to the finality of a stipulation of dismissal of a pending proceeding, and the court held

such dismissal was not effective prior to the transfer of the case to the district court which rendered the judgment attacked.

In the case at bar there is no question but what the judgment rendered on December 2, 1959, was only quasi in rem and that it was a final disposition of the litigation then pending before the court in Minnesota. Nothing changed that determination, according to the record before us. Therefore, to obtain a personal judgment against the defendant for the amount of the judgment previously rendered which was not satisfied by the sale of attached property, we hold it was necessary at that late date to commence a new action and serve a new notice upon defendant under the due process requirement applicable in both Minnesota and Iowa, and that plaintiff's attempt to continue the already-determined litigation by motion without reopening proceedings and without due notice to defendant of his claim for personal judgment cannot be recognized as a valid basis for the judgment sued on in this proceeding. To determine otherwise would surely violate the rule that this judgment must be rendered under a system reasonably assuming notice and hearing.

IV. Our examination of Minnesota law reveals that a judgment rendered in its

court is final and conclusive until set aside or reversed. Even an appeal does not vacate or annul the judgment and the matter determined remains res judicata until it is modified or reversed. Simonds vs Norwich Union Indemnity Co., 73 F.2d 412, certiorari denied.

In any event, it is plain here that a new judgment in personam purporting to cut off all available defenses could not be rendered on any theory of the State's power over defendant without some form of notice, which was not given subsequent to the in rem judgment. Griffin vs Griffin, 327 U.S. 220, 228, 66 S.Ct. 556, 560, 90 L.Ed. 635, 640; Wuchter vs Pizzutti, 276 U.S. 13, 18-20, 48 S.Ct. 259, 260, 261, 72 L.Ed. 446, 449, 450; Restatement of Conflict of Laws, Sec. 75. In Griffin, it is stated: "A judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction." National Exchange Bank vs Wiley, 195 U.S. 257, 25 S.Ct. 70, 49 L.Ed. 184; Restatement of Judgments, Sec. 11, Comment c.

V. The trial court's conclusion that the record herein discloses that the alleged judgment of September 26, 1961, sued upon in Iowa, was acquired without due process and could not be recognized in our courts, was correct and, there

being no cross-appeal by defendant, the decision below must be affirmed.

AFFIRMED.

All Justices concur.

APPENDIX I

IN THE SUPREME COURT OF IOWA

105

53988

CLIFFORD F. HANSEN,
Appellant,

vs.

ANNE LAMM HAAGENSEN,
Appellee.

PETITION FOR REHEARING under C.P.R. 350

TO THE ABOVE-NAMED COURT:

The Petitioner, (Appellant), respectfully moves the above-named Court for an Order:

(1) vacating and expunging the Decision filed June 23, 1970; and (2) granting this Petition for a determination of this appeal on the facts and the law applicable thereto, as hereinafter set forth.

As grounds for this Motion, Petitioner states the following:

Section I - Facts of the Case.

Appellant contends, in connection with the rules of law to be applied herein, that he is entitled to have a composite of the following facts as established in the Record.

1. Petition set forth a Minnesota Judgment of $6,489.93, as entitled to full faith and credit under U.S. Const.

Am. #4, Sec. #1. (R 4, 1-20).

2. Original Notice served on Defendant on July 26, 1965. (R 1).

3. Duly exemplified copy of said Judgment filed with Iowa Clerk on August 24, 1965. (R 86).

4. Motion for Summary Judgment on September 12, 1967, (R 6 1-11).

5. Moving papers included: Photocopy of Judgment; provisions of Minnesota Constitution as to jurisdiction of District Court; M.R.C.P. 5:01; Decision and Order for Judgment, dated Sept. 26, 1961; written appearances and motions, signed by Defendant, as filed on Nov. 17, 1959, and on December 8, 1959; Order of Minnesota Court denying said motions, on December 30, 1959; and other pertinent papers.

6. Except for a general denial, (R 5, 1-33), Defendant entered no adverse showing to said Motion for Summary Judgment. (R 15, 1-1).

7. Copy of Minnesota Complaint attached to Iowa Petition; and covered claim under Minnesota Contract for legal services of $10,350. (R 4, 1-27 et seq.)

8. Minnesota action, exclusively for money damages, begun on August 24, 1959. (R 3, 1-25).

9. Collateral to main action was an attachment proceeding, under M.R.C.P. 4:04, as effective at the time. (M.S.A. Vol. 27 A, 1958); with no provision for special appearance. (Appellant's Brief, p. 37).

10. Minnesota Court made findings of fact as to said attachment proceedings, (R 93, 94 and 95).

11. Copy of Minnesota Summons and Complaint personally served on Defendant at Decorah on September 21, 1959, by Sheriff. (Ex. #5, R104, 1-14).

12. No appearance by Defendant on or before October 29, 1959, whereupon Plaintiff made an Affidavit of Default in due form. (R 95, 1-30 et seq.)

13. Minnesota Court is a constitutional court, with general jurisdiction in civil and criminal matters. (Ex. #2, R 91, 1-11).

14. M.R.C.P. 5:01 provides that a party appears when he serves or files any paper in the proceedings. (Ex. #3, R91, 1-23). Minnesota has no provisions for special appearance.

15. On November 17, 1959, Defendant filed a writing, signed, and verified before a Notary Public, stating that the Minnesota Court "has no jurisdiction in the Case", for five reasons. (Ex. #8, R 107, 1-15).

16. No service of such Notice and claim was made on Plaintiff, as provided by M.R.C.P. #5; though two copies were filed with the Clerk of Court. (R 11, 1-19).

(Note: It appears to have been the belief of Defendant and her attorney that Iowa procedure prevailed; and that the Clerk would mail out a copy. This was not done.)

17. Not being informed of said November 17th filing, Plaintiff proceeded as though no appearance had been made and that a default existed. This was a situation for which Defendant and her counsel were responsible. Assuming that a quasi in rem situation existed, Plaintiff procured an appropriate Order for Judgment for $10,300, dated December 2, 1959, for the purpose of an execution sale of the attached property. (R 101, 1-20, et seq.)

18. Plaintiff learned of said November 17th filing after December 2, 1959; and then held up further proceedings.

19. On December 8, 1959, Defendant filed an Amended writing, signed and verified before a notary public, by which the matters set forth in the November 17th writing were adopted and four additional grounds were added. (Ex. #9, R. 110, 1-1) These papers were filed by her attorney. (R 39, 1-5).

(Note: No service of December 8 filing was made on Plaintiff; but two copies were filed with the Clerk, as in the case of November 17th filing.) (R 12, 1-7).

20. In said writings, Defendant claimed that she owned no property in Hennepin County; and that the Hennepin County District Court could not issue a valid Order of Attachment outside of Hennepin County. (R 110, 1-18).

(Note: The statement in the Opinion of this Court that Defendant said she owned no property "in Minnesota" is not correct.) (R 110, 1-18).

21. The attack by Defendant was on the powers of the Minnesota Court. (Ex. #8, R 107, 1-15; Ex. #9, R 110, 1-1).

(Note: Not in question: any steps taken by Plaintiff in initiating the attachment proceedings.)

22. Defendant noticed said writings and claims contained therein for hearing on December 30, 1959. (R 96, 1-20).

(Note: Defendant's Ex. #1 is believed not to show the Note is Issue signed by Defendant and filed with the Clerk.)

23. On December 30, 1959, a hearing was held before Judge Knudson on said objections filed by Defendant on November 17th and December 8th. (Ex. #10, R 112, 1-5) (R 40, 1-1 to 33).

24. Judge Knudson, on said date, denied said motions by Defendant. (Ex. #10, R 112, 1-5) R 96, 1-18).

25. No appeal was taken by Defendant.

26. Entering the Judgment provided for in the Order of December 2, 1959, as a basis for the attachment sale, was held up, and was not docketed until January 7, 1960.

27. Judgment docketed on January 7, 1960, was a money judgment for $10,634.32, covering principal and interest. (see Def. Ex. #1).

(Note: Def. Ex. #1 is a photocopy of most of the records filed with the Clerk. No certificate is attached. It does not include testimony and other matters taking place in open court.)

28. Defendant was given mailed notice of Taxation of Costs, relative to judgment of $10,300, on December 22, 1959;

and also mailed notice of Execution Sale on April 26, 1960. (see Def. Ex. #1).

29. The trial court found that December 8, and prior, and on December 28th and 30th, Defendant "appeared in said action within the meaning and conditions" of M.R.C.P. 5:01 (R 96, 1-9); and also by reason of specified facts covering the law and acts of appearance by Defendant that said court had jurisdiction therein. (R 98, 1-8).

30. Defendant has never claimed that Plaintiff did not render legal services to her; or that she is not indebted therefor.

31. Following December 30, 1959, Defendant abandoned said litigation. Atty. Gross indicated in his testimony that Defendant had no intention or proceeding further. (R 39, 1-27).

32. Defendant having made a general appearance, Plaintiff could not voluntarily dismiss and start a second suit.

33. No dismissal has ever been filed, as required by M.R.C.P. 41.

34. Plaintiff then proceeded to close the case as a default. (Ex. #4, R 92, 1-20 et seq.) That was Plaintiff's only legal course.

15. The Judgment sued on was then entered. (Ex. #1, R 86, 1-6 et seq.)
(Note: Set forth for convenience of Court in consolidating the facts, to which the law contended for by Plaintiff (Appellant) is to apply.)

Section II - Law of Case

Appellant notes the following legal points as applicable to the case at bar under the facts stated in Section I hereof; and claimed as disregarded herein.

1. The legal rights of Appellant under Article #4, Sec. #1, of the U.S. Constitution are superior to the Iowa Constitution, the laws of Iowa and the rules of court.

2. Under the Petitition in the trial court, asserting such constitutional right with respect to the Minnesota Judgment therein set forth, the Iowa Courts have only two questions to determine; yes or no:

(a) did the Minnesota Court; under the laws of Minnesota, have jurisdiction of the subject-matter of said action; and

(b) did the Minnesota Court, under the laws of Minnesota, have general jurisdiction of the person of Defendant.

3. In answering these questions, yes or no, the laws of Iowa, the Iowa Court Decision, and comity, are not to be considered.

Amer. Jur. 2nd, Vol. 47, p 223, Sec. #1216.

Estrin vs Estrin, 68 S.Ct. 1213, 334 US 541.

Syl. 3 - Full faith and credit clause substitutes command for earlier principles of comity.** (supplied).
Syl. 4 - Said clause orders submission by one state to judgment of another state, even to hostile principles reflected therein.**

4. Milliken vs Meyer, 61 S.Ct. 339 311 US 457, is a controlling case. A portion of the Decision is set forth in Appellant's Brief, (see page 19). This case limits the Iowa Court to a proper legal determination of the two questions noted in paragraph 2 above.

5. The Iowa trial court made no express finding on the question of the jurisdiction of the Minnesota Court under Minnesota law over the subject matter; but it did not find in the negative.

The evidence presented makes it clear that the Minnesota Court did have such jurisdiction over the subject matter.

6. As to the second question, jurisdiction over the person, the Milliken case was concerned with the service of a summons under a so-called "long-arm" statute. And that case held that the service of process made in accordance with the laws of the state are good. Also, that if the fact of such service is questioned when the judgment is sued on in a second state extrinsic evidence is required on such issue, to dispute the Record.

7. In the case at bar, the matter or question of process was not and could not be an issue, since the Defendant entered a voluntary appearance. There was no evidence introduced to deny or contradict such voluntary appearance as shown in the Record.

50 C.J.S. p 508, Sec. (5). No matter what may be the form or manner of service on a non-resident defendant, if he voluntarily enters an appearance in the action the court acquires complete jurisdiction of him, so that a judgment based thereon must be accounted valid and binding in all states. (supplied)

Weber vs Weber (1951) 110 NYS (2) 729 Syl. 1 - Where party voluntarily submits to jurisdiction of sister state by general appearance, such party may not collaterally attack the jurisdiction of that court.

Benedict vs Benedict (1952) 115 NYS(2) 115. Syl. 8 - A party appearing and participating in proceedings in a court of any state will be precluded from questioning the jurisdiction of the court over the person in any subsequent proceeding in that state or any other state if the court in which he appeared purported to render judgment against him.

Kipp vs Fullerton 4 Minn 473 (Gil 366, p 374. - The decisions again and again assert the principle that the proceedings of a court of general jurisdiction cannot be questioned collaterally, and are absolutely binding on the parties, until set aside by the tribunal in which they have taken place, or regularly reversed on error. (supplied).

Hotchkiss vs Cutting 14 Minn 537 (Gil. 408). Syl. - Where the record shows jurisdiction, the judgment cannot be collaterally attached for any irregularity. (supplied).

Numerous citations *

Cone vs Hooper 18 Minn 531 (Gil. 476, p 479) ***The proceedings of superior courts are presumed correct until manifestly erroneous; and cannot be contradicted or convicted of error by extrinsic evidence. (Smith, Ledd. Case 820)

They are absolutely binding on the parties until set aside by the tribunal in which they have taken place; or are reversed on error.

Hall vs Sauntry (1898) 75 NW 720 72 Minn 420. Syl. 1 - In an action where the court has jurisdiction over the parties and the subject matter, a judgment therein rendered cannot be impeached collaterally. (supplied).

Walling, Adm. vs Miller (1943) CCA-8 138 F(2) 629, p 632. Syl. 7 - Every court in rendering judgment has authority and does, tacitly or expressly determine its jurisdiction over the parties and the subject matter; and its judgment sustaining jurisdiction is not open to collateral attack.

8. The evidence in the case, and the Minnesota decisions in relation thereto establishes that Defendant did in fact make a general appearance under Minnesota law. And further, the Minnesota trial court so determined. (Ex. #4, R 92, 1-26 et seq.)

In this connection, it should be noted that the equivalent to a special appearance is retained in Minnesota only as to service of process upon the person, himself.

Commiskey vs Commiskey 259 Minn 427 107 NW (2) 864. This is upon the theory that if the person was not legally or personally served with process, the court never acquired jurisdiction. That case does not extend to personal appearance.

9. There is no such thing as fractional general jurisdiction. The Minnesota Court, under Minnesota law, had complete general jurisdiction of Defendant as well as the subject matter. Thus, the Minnesota judgment cannot be collaterally attacked either in Minnesota or Iowa. And any proceeding to set aside the Minnesota Judgment as voidable must be brought before the Minnesota Court.

The Iowa court must observe the distinction between void and boidable judgments. And the Iowa court must give the Minnesota Judgment the same standing that it has in Minnesota. This is a vital point in the case, which has not been observed.
See Authorities under par. 7 above.
See Appellant's Brief, P 50, Div. II.

10. In the Milliken case, 61 S.Ct. 339, 311 US 457, the U.S. Supreme Court said that where the trial court has jurisdiction of the subject matter and the person of defendant, that full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the

decision, or the validity of the legal principles on which the judgment is based, and whatever mistakes of law may underlie the judgment.

The Iowa trial court has disregarded the uncontrovertible facts in the Record, as well as the findings of the Minnesota Court as to both jurisdiction over the subject matter and the defendant. (Ex. #4, R 92, 1-24, et seq.) And even though the Minnesota Judgment may be voidable, it is beyond the right and power of the Iowa Court to assume to act as an appellate court.

See Authorities under Par. 9 hereof.

Wherefore, Appellant moves this Court for reconsideration of its said Decision, and a rehearing in connection therewith.

Summarizing:

1. The cause of action in the Minnesota Complaint is for a money demand, (not in rem), based upon a Minnesota contract. The judgment covers the same cause; and no increase.

2. Defendant made a general appearance under Minnesota law, as determined by the Minnesota Court in its Decision, Ex. #4 - supra) and sustained by the evidence therein.

3. Such general appearance went to all the issues in the Minnesota case under the pleadings.

4. A duly authenticated copy of the Minnesota Judgment sued on was duly filed in the Iowa Court. (Ex. #1, supra).

5. Defendant abandoned the case after such general appearance, and defaulted therein, as duly found by the Minnesota Court. (Ex. #4, supra).

6. After such general appearance, Plaintiff was not free to bring a second action on the same cause. (No additions made.)

7. Under the Decision of the Minnesota Court, finding jurisdiction of the subject matter, (money demand), and of the Defendant by reason of a general appearance under Minnesota law, (Ex. #4, supra) and the evidence in the Record here sustaining the same, and also the Judgment entered pursuant to said Decision, (Ex. #1, supra), Defendant cannot attack said Judgment, collaterally, either in Minnesota, or in Iowa under the cause of action herein specifically alleging the full faith and credit clause of the federal constitution.

Section III - Objections and Miscellaneous Matters

1. Appellant contends that National Exchange Bank vs Wiley, 25 S.Ct. 70, 195 US 257, is not in point and is not controlling as to the case at bar. Plaintiff there sued in Ohio under a warrant of attorney annexed to a promissory note, authorizing confession of judgment "in favor of the holder". There was no service of process, or appearance by defendant.

On suit on the Ohio judgment in Nebraska, the defendant contended that Plaintiff had sold the note and <u>was not the holder</u> when the action was brought. There was a jury trial, with a verdict for defendant.

2. Appellant contends that Wuchter vs Pizzutti, 48 S.Ct. 259, 276 US 13, is not in point. Involved was a traffic accident. Pizzutti lived in New Jersey and was driving a team on the highway, when Wuchter, a resident of Pennsylvania, crashed into his wagon. Pizzutti sued in the New Jersey court and served process on the Secretary of State under the state law. There was no service on Wuchter, and he did not appear.

The Supreme Court held that the New Jersey law did not make it reasonably probable that notice would be communicated to a non-resident defendant.

3. Appellant contends that Griffin vs Griffin, 66 S.Ct. 556 327 US 220, on the facts in the case at bar, does not support the position of defendant. The Court there said that the second state is only required to give the same effect to the judgment of the first state as given to it by that state.

The law of the first state provided that where subsequent additions are made to an alimony judgment a further hearing is required before execution could issue. Thus, the judgment was not final as to such additions.

The case at bar does not involve subsequent alimony payments; and there is no such comparable statutory provision in Minnesota. Also, no additions to the original demand.

4. Appellant contends that the citation, 47 Am. Jur. 2nd #1221, is not applicable to the case at bar.

The Record in the Minnesota proceedings and the Decision of the Court show that Defendant did have notice; that Defendant made a voluntary general appearance under Minnesota law; and that Defendant had an opportunity to be heard.

The question of process, (Service of Summons or Notice) is not an issue. 50 C.J.S. p 508, supra (See Sec. II, par.7)

5. Appellant contends that the citation, 47 Am. Jur. 2nd, §1222, is not applicable to the case at bar.

Minnesota law is controlling. And the uncontracted facts are that Defendant did have Notice; that Defendant made a voluntary general appearance under Minnesota law; and that Defendant had an opportunity to be heard.

50 C.J.S. page 508, Supra; and citations in Section II, par. 7.

6. Appellant contends that the Iowa Courts in this case are doing what the 4th Amendment was designed to prevent. Pacific Employers' Ins. C. vs Indus. Acc. Commission, (1938) 59 S.Ct. 629; 306 US 493.

7. On the record herein, and the Decision of the trial court, (R41, Item No. 28), this Court is asked to take judicial notice of the fact that Defendant, and counsel for Defendant, (also county attorney), and the trial Judge were longtime, and are now, residents of the same city; thereby impinging on the legal rights of Plaintiff under the U.S. Constitution to have a disinterested judicial determination of the issues involved. (Haynesworth; Carswell.)

8. Appellant contends that under the full faith and credit clause, the Iowa Courts may not review the intrinsic evidence in the case, (here, only such records as filed with the Minnesota clerk), and sit in appellate review of the Decision of the Minnesota Court, and the findings and determination made therein, (Ex. #4, R 92, 1-26). Such review is for the Minnesota Court in direct proceedings under M.R.C.P. 60:02, for which, Defendant has never asked.

See Authorities under Section II, par. 7 and Appellant's Brief, p 50.

Until such review in Minnesota, said Minnesota Judgment is entitled to full force and effect in Minnesota; and also in all other states.

9. Appellant contends that Defendant having made a general appearance in the Minnesota Court, and a general appearance going to all the issues raised by the pleadings; it is in violation of the full faith and credit clause of the federal constitution for the Iowa Courts to consider and pass upon intrinsic evidence and also any facts going to the voidability of the Minnesota Judgment. (Sec. II, par. 7). And the Iowa Courts cannot require "a further notice" to make the Minnesota Judgment good. That is a matter secondary to the general jurisdiction acquired by the Minnesota Court; and thus

goes only to the question of voidability. And whether or not the judgment is voidable, is a defense which cannot be raised collaterally, either in Minnesota or Iowa.

It is not competent for the Iowa Court to sit in review of the Decision of the Minnesota Court as to what is required under Minnesota law to effect general jurisdiction of a defendant voluntarily appearing in a Minnesota Court proceeding. Further, "process" is not involved where a defendant makes a voluntary general appearance. 50 C.J.S. p 509 Sec.(5). Also, citations, Sec. II, par. 7. And the Iowa Court, under the full faith and credit clause, cannot invoke comity.

10. Appellant contends that under the full faith and credit clause, before the Iowa courts can conclude that the Minnesota Judgment is void, (which is a legal conclusion), there must be findings of fact from which it appears that the Minnesota Court did not have jurisdiction of the money claim set forth in the Minnesota Complaint, and/or that the Defendant did not enter a voluntary appearance within the laws of Minnesota. The only extrinsic evidence offered by Defendant was by Gross. (R 38, 1-26, et seq.) And his testimony admits a voluntary appearance.

The findings of the trial judgment, (R 42, 1-7 et seq.) are clearly arbitrary and without evidentiary foundation.

Section IV. - Relief

1. The Decision of this Court filed on June 23, 1970, should be vacated and expunged.

2. This Court should make, or require the trial court to make, findings to the following effect:

(a) that the Judgment of the Minnesota Court, dated September 26, 1961, was based on jurisdiction of the subject matter under the laws of Minnesota;

(b) that said Judgment of the Minnesota court was based on jurisdiction of the Defendant by reason of voluntary general appearance under the laws of Minnesota; as determined by the Minnesota Court.

(c) that the Judgment of the Minnesota Court, dated September 26, 1961, should stand as entered; and

(d) that said Minnesota Judgment dated September 26, 1961, is entitled to full

faith and credit under the Constitution of the United States, Amendment #4, Section #1, and with appropriate conclusions of law in the premises.

CONCLUSION

For the reasons set forth above, Petitioner prays this Court grant re-hearing of its Decision filed June 23, 1970, vacate said Decision, grant this Petition and review said Decision, as provided by law.

Respectfully submitted

Clifford F. Hansen
Appellant, Pro Se

CERTIFICATE OF COUNSEL

Petitioner, Appellant Pro Se, hereby certifies that this Petition for Re-hearing is presented in good faith, and to prevent a judicial determination therein alleged to be in violation of the Constitution of the United States; and is not for delay.

Clifford F. Hansen
Appellant, Pro Se

APPENDIX J

ORDER DENYING REHEARING

In the Supreme Court of the State of Iowa.
BE IT REMEMBERED, That on the 2nd day of September, 1970, the following proceedings were had, to-wit:

CLIFFORD F. HANSEN, Appellant,
vs
ANNE LANN HAAGENSEN, Appellee

ORDER

The above Petition for Rehearing has been considered by the Court and is now denied.

THE SUPREME COURT OF IOWA

/s/ C. Edwin Moore,
Justice

APPENDIX K
(Iowa Record, p 1-5)
PLEADINGS
Item No. 2 - Petition (Par. 15 thereof)
(Iowa Record, p 4)
"A copy of the Judgment in the Minnesota action, dated September 26, 1901, for $6,489.93 is set forth in full. (See printed Record Exhibit No. 1) That said judgment under the Constitution and laws of the U.S. of America is entitled to

full faith and credit in the State of Iowa, on which Plaintiff seeks a money judgment."

Item No. 3 (Iowa Record, p 5). Exhibit "A" attached to Petition is a copy of Complaint in Minnesota action.

Par. 4 thereof. "Value of services, $10,000 and expenses of $850, for which Defendants are indebted to Plaintiff."

Par. 5 thereof. "Defendants have $350 on expenses".

Par. 6 thereof. "Defendants have failed, neglected and refused to pay the balance of $10,350. Prays Judgment as aforesaid against Defendants and each of them, with costs".

Note: No "in rem" allegations appear in Minnesota pleadings.

APPENDIX L

(Iowa Record, p 38-41)

TESTIMONY OF ATTORNEY GROSS

Everett W. Gross. February 24, 1969. "Duly sworn, his address is 314 13th Ave., Helena, Montana. He made application to Hennepin County District Court to represent said McAndrews and Haagensen, with such request mailed in in November 1959. The request was never granted."

"He appeared in a Special Appearance in December 1959. The Judge did not resist his appearance. A Special Appearance was filed in November, and an Amendment to the Special Appearance was filed in December. He argued only the Special Appearance."

"To his knowledge, he was the only attorney appearing for them. He states, 'My only authorization was to appear specifically and attack the jurisdiction of the Court.' The Defendant did retain him for that specific purpose."

"He has been a legal resident of Montana since 1958, but had to spend a good part of most of his time in Iowa, due to his family. He has resided in Montana full time since 1962."

Note: Only extrinsic evidence presented by Defendant.

APPENDIX M

(Iowa Record, p 41)

SUPPLEMENT MOTION RE: SUMMARY JUDGMENT Item No. 27 - Motion by Plaintiff, filed on January 15, 1969, asking immediate determination and allowance of Motion for Summary Judgment; and for finding as follows:

1. said Minnesota Court is a constitutional court, with jurisdiction to enter the foreign judgment involved;

2. Minnesota Rules of Civil Procedure for district courts contain no provision for a special appearance;

3. Defendant entered a voluntary appearance;

4. Defendant invoked the jurisdiction and powers of said Minnesota Court; and

5. said Minnesota Court overruled all objections made by Defendant.

APPENDIX N
(Iowa Record, p 53-62)
MOTION FOR NEW TRIAL
Item No. 29 (Abridged) -
5. Jurisdiction by Minnesota Court over subject matter was unchallenged.

7. Defendant appeared voluntarily to challenge the jurisdiction of the Court and dismiss the action.

14. That the rights of Plaintiff are determined by Minnesota Law and the federal law applied thereto.

16. That a Minnesota Judgment, as held by that Court, is never void for error.

where the Minnesota Court had jurisdiction of the subject matter and the Defendant.

18. That the trial court, (Iowa) cannot sit in review of a money judgment by the Minnesota Court.

27. The trial court disregarded the ruling of the U.S. Supreme Court, in Milliken vs Meyer, 311 US 457, with pertinent quotations therefrom set forth.

Item No. 30 - Supplement
1. The findings improperly set forth quoted law from cases and digests ***

2. The trial court was limited to the judicial determination of facts as to two issues:

(a) Did the Minnesota Court have jurisdiction of the subject matter;

(b) Did the Minnesota Court have personal jurisdiction of Defendant under Minnesota law.

17. The trial court is without power and jurisdiction to sit as an appellate court in the premises ***.

APPENDIX O

(Iowa Record, page 63)
NOTICE OF APPEAL TO SUPREME COURT
Item No. 32 (Abridged).
NOTICE IS HEREBY GIVEN: That the above-named Plaintiff hereby appeals to the Supreme Court of Iowa from the Findings of Fact, Conclusions of Law, and Judgment and Decree, by Judge Joseph C. Keefe, filed in the above-entitled matter on April 16, 1969, and the whole thereof,***

and also all amendments of said Decision which may be made, except as the same may give full faith and credit to the Judgment of the District Court for Hennepin County, Minnesota, a court of general jurisdiction, in Case No. 548-060, dated September 26, 1961, the same being a money judgment, and set forth in the Petition herein, under the Constitution and Laws of the United States of America, including Article IV, Section I thereof.***

Dated May 14, 1969.
Filed with Clerk, May 15, 1969.

APPENDIX P

APPLICABLE FEDERAL PROVISIONS OF LAW
1. U.S. Constitution, Art. IV, Sec. 1, U.S. Codes Ann., Arts. 3 to 7, p 357.
Sec. 1. Full faith and credit shall be

given in each state to the public Acts, Records and Judicial Proceedings of every other state. And the Congress may by general Laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the effect thereof.

2. 28 U.S. Code, Ann. #1738. State *** judicial proceedings; full faith and credit. ***The records and judicial proceedings of any court of any such state*** or copies thereof, shall be proved or admitted in other courts within the United States ***by the attestation of the clerk and the seal of the court annexed, if a seal exists, together with a certificate of a judgment of the court that the said attestation is in proper form. Such Acts, Records and Judicial Proceedings or copies thereof, so authenticated shall have the same full faith and credit in every court within the United States *** as they have by law or usage in the courts of such state *** from which they are taken. June 25, 1948, c 646, 62 Stat 947.

3. U.S. Code, Ann., Arts 3-8, p 715, Article VI *** Supreme Law of Land *** This Constitution, and the Laws of the United States which shall be made in puruit thereof; *** shall be the Supreme Law of the Land; and the judges in every state shall be bound thereby, anything in the Constitution or Laws of any state to

the contrary notwithstanding. *** and all executive and judicial officers, both of the United States and of the several states, shall be bound by Oath or Affirmation to support this Constitution; ***

4. 28 U.S. Code, Ann. #1257. State Courts; Appeal; Certiorari. Final Judgments or Decrees, rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

1. ***
2. ***
3. By Writ of Certiorari where *** or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or any authority exercised under, the United States. June 25, 1948, c 646. 62 Stat. 929.

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In The

SUPREME COURT of the UNITED STATES

October Term, 1970

No. 1004

Clifford P. Hansen, Petitioner,

vs

Anne Lamm Haagensen, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

Thomas C. Lynch
109 1/2 W. Water Street
Decorah, Iowa 52101
Counsel for Respondent.

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In The
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October Term, 1970

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Anne Lamm Haagensen, Respondent,

BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF IOWA

The respondent, Anne L. Haagensen of Decorah, Iowa, herewith submits her Brief in Opposition to said petition on the grounds that: (1) this case presents no substantial federal question, (2) the decision of the Iowa Supreme Court is in accord with prior applicable decisions of this court, and (3) this case involves no principles of general importance as distinguished from the consequences to the parties themselves.

RESPONDENT'S STATEMENT OF THE CASE

Because the Statement of the Case submitted by the petitioner omits vital portions of the record essential to comprehension of this

case, and includes much extraneous matter not found in the record of this case below, the respondent is compelled to submit her version of a Statement of the Case.

Petitioner, as plaintiff, obtained a Minnesota Quasi in Rem judgment on December 2, 1959, based on substituted service on the respondent in the State of Iowa, in the sum of $10,350.00. As a part of this judgment, the Minnesota Court found it then "became vested with jurisdiction to the extent of property so attached and garnished". (Petitioner's Brief, A35, A45). Subsequent to this judgment, respondent argued her Special Appearance alleging inter alia that she owned no property in Minnesota which could be the subject of an attachment. (Said motion was not ruled upon until 17 months later when it was overruled by an Order Nunc Pro Tunc). Four months after the December, 1959, judgment, a sheriff's sale of real estate owned by a co-defender sister of the respondent was held and the proceeds applied to the said Quasi in Rem judgment (Petitioner's Brief, A46).

The case remained dormant thereafter for 17 months, when a motion was filed supported by plaintiff's own affidavit "for a judgment for the amount remaining due and owing" (A46). The next day an ex parte judgment was rendered without any form of notice to the defendant-respondent. The petitioner then sought an Iowa

in personam judgment based on the Minnesota judgment, which was denied by the Iowa District and Supreme Courts because of their finding of a lack jurisdiction of the person of the defendant to support the decree of the Minnesota court.

REASONS TO DENY WRIT

The petition for writ of certiorari appears to be grounded upon a claimed failure of Iowa to extend full faith and credit to a Minnesota judgment as required by Article VI, Section 1 of the U.S. Constitution. In order for the petitioner to have benefit of this protection, there must be a showing that the judgment was rendered in a proceeding not wanting in due process of law. This issue was decided adversely to the petitioner in all courts below. (A53; A40). Hence, the decision petitioner seeks to have reviewed involves no substantial federal question. A purported personal judgment secured without any form of notice to the defendant has no standing to seek the benefit of the Full Faith and Credit clause of the U.S. Constitution. The instant case involves strictly local issues decided on fundamental procedural due process principles.

The complete record of this case if made available to this honorable Court would show that the petitioner first secured a quasi in rem judgment in Minnesota and exhausted all

of his remedies by selling all of the attached Minnesota property owned by a co-defendant sister of this respondent. When those proceeds were applied to said judgment, it constituted a final disposition of the litigation then pending before the Minnesota court. (A52). The court costs were paid in full and for all legal purposes the case was finally disposed of. But 17 months thereafter the petitioner sought to resurrect the case by affidavit. Said affidavit was filed one day and the judgment was entered the next - all without any form of notice to the respondent.

The Iowa Supreme Court was clearly mindful of the Full Faith and Credit aspects of the instant case (See A50-53 of Petitioner's Brief). It followed prior holdings of this court that the judgment of a sister state's court may be collaterally attacked if the assertion of jurisdiction over the defendant violated the due process clause of the Fourteenth Amendment of the U.S. Constitution.

Adam v. Saenger (1938) 303 U.S. 59, 68; 58 S. Ct. 454; 82 L. Ed. 649.
McGee v. International Life Ins. Co. (1957) 355 U.S. 220, 222; 78 S. Ct. 199; 2 L. Ed. 2d 223.
Griffin v. Griffin, 327 U.S. 220, 228; 66 S. Ct. 556, 560; 90 L. Ed. 635, 640.

But even if jurisdiction could have been constitutionally assumed by the Minnesota court, the judgment is open to collateral attack where the sister state's internal law has not authorized the exercise of personal jurisdiction to the full constitutional extent attempted here.

> Treinies v. Sunshine Mining Co. (1939) 308 U.S. 66, 78; 60 S. Ct. 44; 84 L. Ed. 85.
> Restatement of the Law 2d, Conflict of Laws, Ch. 4, Introductory Notes 39 and 40.
> Restatement of the Law, Judgments, Section 14, Comment b.

The record is clear that the petitioner at no time offered any proof that Minnesota law authorized the kind of procedure utilized to obtain the judgment sued on. The Iowa Supreme Court comment on this failure (A49):

> "We know of no rules and none were called to our attention which would permit a subsequent appearance of this kind to be considered retroactive, or allow a personam judgment for the amount of the quasi in rem judgment unsatisfied by the sale of property attached and levied upon, without a reopening and due notice thereof."

Proof of applicable Minnesota law in Iowa courts is a matter of Iowa law.

> Adam v. Saenger (1938) 303 U.S. 59; 58 S. Ct. 454; 58 L. Ed. 649.

And in the absence of proof of applicable Minnesota law by the petitioner, the Iowa court may take judicial notice of the foreign law. McCormick on Evidence, Section 323. The Iowa court did refer to Minnesota law as a basis for its decision where it stated (A52-53):

> "Our examination of Minnesota law reveals that a judgment rendered in its court is final and conclusive until set aside or reversed. Even an appeal does not vacate or annul the judgment and the matter determined remains res judicata until it is modified or reversed. Simonds vs. Norwich Union Indemnity Co., 73 F. 2d 412, certiorari denied.
>
> In any event, it is plain here that a new judgment in personam purporting to cut off all available defenses could not be rendered on any theory of the State's power over defendant without some form of notice, which was not given subsequent to the in rem judgment. Griffin vs. Griffin, 327 U.S. 220,

228, 66 S. Ct. 556, 560, 90 L. Ed. 635, 640."

The Minnesota judgment of December 2, 1959, specifically found that it had only quasi in rem jurisdiction over the respondent which constitutes res judicata on the quality of jurisdiction had by the Minnesota court; this finding has never been modified or reversed. (A45).

A basic essential of Constitutional Due Process is notice to the party defendant. The courts below found and the petitioner concedes no notice was given. (A49). Petitioner's assertion of in personam jurisdiction is grounded upon an alleged general appearance which he avers resulted from giving retroactive effect to a special appearance argued subsequent to entry of the quasi in rem judgment. Petitioner was unable to produce any Minnesota statute, rule or case holding to substantiate his theory. We can scarcely fault the Iowa Supreme Court for failing to adopt petitioner's theory when neither the legislature nor the courts of Minnesota have yet seen fit to do so. There can be no Full Faith and Credit violation, and hence no substantial federal question, with respect to petitioner's purported judgment entered with fatal jurisdictional defects. 50 C.J.S. Judgments §893.

Petitioner's case involves no legal

principles of general interest or importance to justify the granting of certiorari. The facts and circumstances of the case are peculiar to the parties themselves, and have been thoroughly litigated in the lower courts during its eleven year life span. Cost of that litigation has far exceeded the modest deficiency judgment the petitioner seeks to sustain. In essence, the petitioner by the theory of his case, is seeking to engraft upon Minnesota law a rule of procedure that its courts and legislature have never adopted. Were a writ of certiorari to be granted in the instant case, this honorable court would be called upon to establish that petitioner's theory of jurisdiction is a part of Minnesota procedural law in the face of a clear showing that neither its courts nor its legislature have made it so. No substantial federal question would be involved in such an undertaking.

CONCLUSION

The petitioner through voluminous pleading and citation of authority tends to confuse and obscure the concise holding of the Iowa Supreme Court on a very fundamental jurisdictional defect in his judgment. He has failed throughout to cite a single Minnesota authority to sustain his theory of jurisdiction. Instead, he seeks to use the Full Faith and Credit clause of the U.S. Constitution to shield the fatally defective jurisdictional flaws in

the judgment he seeks to uphold.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES
October Term, 1970

No. 1004

Clifford F. Hansen, Petitioner,

vs

Ann Lamm Haagensen, Respondent,

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF IOWA

REPLY

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1970
No. 1004

Clifford F. Hansen,

Petitioner,

vs

Ann Lamm Haagensen,

Respondent.

REPLY
TO BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF IOWA

The questions of the jurisdiction of the Minnesota Court over the subject matter and the Defendant, (Respondent herein) have been fully covered in the Petition herein. See Petition, p. 12. The Answer of the Respondent herein makes no mention of the question of the personal appearance of Defendant (Respondent herein), in the Minnesota Court and the attack upon the powers of

said Minnesota Court. See Petitioner's Appendix, pages A-15; A-18; A-21; and A-23.

Respectfully submitted.

Clifford F. Hansen
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Of Counsel
Harry H. Peterson
Minneapolis, Minnesota

1-14-71

[redacted]

[redacted]

Clifford F. Hansen

Petitioner,

vs.

Ann Lewis Haugerud,

Respondent.

PETITION FOR CERTIORARI
AND BRIEF IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI TO THE
SUPREME COURT OF IOWA

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970
No. 1004

Clifford F. Hansen,

Petitioner,

vs

Ann Lamm Haagensen,

Respondent

PETITION FOR RECONSIDERATION AND REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

TO THE SUPREME COURT OF THE UNITED STATES

Pursuant to Rule 58, of the Rules of this Court, Petitioner petitions for a reconsideration of the Order of the Court dated Feb. 22, 1971, denying said Petition, and for a Rehearing thereof.

That the grounds hereof are that the Minnesota Court, under Minnesota law, had subject matter and personal jurisdiction therein, whereby said judgment could not be collaterally attached in Minnesota as a matter of law. And further, as a matter of Minnesota law, said Minnesota Judgment could be reviewed only by 1) appeal or 2) a direct proceeding in said Court. Whereby, as a matter of law, said Minnesota Judgment comes under Art. IV, of the Constitution.

That said grounds are substantial and controlling as a matter of law on all issues herein involved; and also as a matter of law on all courts herein under said Art. IV.

It appears that the same was not with sufficient succinctness pointed out and argued in the Petition for Certiorari, as well as obscured by the Decision of the Iowa Supreme Court.

That following are the reasons herefore:

Par. I - That the Iowa Courts, trial and appellate, were bound by and could not ignore the following:

1. Art. IV, Sec. #1, of U.S. Const. (App A-82).
2. Art. VI, of U.S. Const. (App A-83)
3. 28 USC Ann #1257, subd. 3, (App A-84)
4. 28 USC Ann #1738, (App A-83).

Summarizing, the Iowa Courts were bound by and required to adhere to the laws and rules of the State of Minnesota, such as they might be, in connection with said Minnesota Judgment. And the authenticated copy of said Judgment, (App A-1) established its prima facie validity.

Par. II - That in carrying out Par. I, above, the Iowa Courts are legally bound and required to adhere to the following:

1. Minnesota Constitution as to the jurisdiction of the Minnesota Court (App. A-26). Said jurisdiction being general.

2. Minnesota Rules of Civil Procedure, as set forth in Minnesota Statutes Ann. Vol 27A, Court Rules, published 1958.

3. Minnesota court decisions as summarized hereafter; and

4. Decisions of the U.S. Supreme Court, including particularly Milliken v Meyers, 61 S.Ct 339.

As stated by Bunn, J. in State ex rel Coburn v Ries, 1913, 123 Minn 397 (400), 143 NW 981, the rule in Minnesota is elementary that a Minnesota judgment of a court of general jurisdiction with subject matter and personal jurisdiction is binding until reversed or set aside by that court and cannot be attacked for error.

Said Minnesota judgments cannot be impeached collaterally, or attached collaterally for any error or irregularity. Early supporting Minnesota cases are:

Kipp v Fullerton (1860) 4 Minn 473 (G366)

Hotch v Cutting (1869) 14 Minn 537 (G408)
to the effect, no collateral attack for any irregularity; and citing numerous cases.

Cone v Hooper, 18 Minn 531 (G476)
to the effect that superior court proceedings are binding until set aside by tribunal of entry or reversed on error.

The Iowa Supreme Court in 1900 recognized the same rule. See Fred Miller Brewing Co. v Capital Ins. Co., Ia. 82 NW 1023 (1027).

Justice Jaggard, in Sodini v Sodini (1905) 94 Minn 301; 102 NW 860, summed up the law as follows:

1. A judgment of a court of superior or general jurisdiction cannot be collaterally attacked unless the record affirmatively shows want of jurisdiction. The cases sustaining this familiar and undisputed rule will be found collected in 30 Cent. Dig. cols. 933, 934, 1385-1395; Black on Judgments, #224, 263. A number of federal cases will be found collected in Southern Pac. R. Co. v U.S. 168 U.S. 1, 51; 18 Sup. Ct. 18, 27; 42 L. Ed. 355. And see Turrell v Warren, 25 Minn 9; Nye v Swan, 42 Minn. 244; 44 NW 9, Gulickson v Bodkin, 78 Minn. 35; 80 NW 783; 79 Am. St. Rep. 352; Hotchkiss v Cutting, 14 Minn 537 (G408); State v Macdonald, 24 Minn 48. A default

judgment in divorce proceedings is no more subject to such collateral attack than any other judgment. In re Newman's Estate, 75 Cal. 213; 16 Pac. 887; 7 Am Rep 146; 2 Current Law 595; Ruppin v McLachlan (Iowa) 98 NW 153. In Last Chance Min. Co. v Tyler Min. Co. 157 US 683; 691, 15 Sup. Ct. 733; 39 L Ed 859, Mr. Justice Brewer said: "But a judgment by default is just as conclusive an adjudication between the parties of whatever is essential to support the judgment as one rendered after answer and contest. The essence of estoppel by judgment is that there has been a judicial determination, and not upon what evidence, or by what means was it reached." The conclusive presumption of validity extends to the return of process upon which the judgment is based. 40 Cent. Dig. cols. 2752, 2753, #193. All intendments are indulged in support of the judgments of courts of general superior jurisdiction. 30 Cent. Dig. #934, cols. 1392-1395. Thus informalities, including errors in the name of the persons designated in the return of service of summons, are not sufficient basis for indirect impeachment of a judgment. * * *(cases). And if the language of the return fairly admits of a construction which will make the return legal and sufficient, it should be so construed. * * * (cases)."

In Milliken v Meyers, supra, this Court said that where the trial court, <u>under its laws</u>, (here, the Minnesota Court), has jurisdiction of the subject matter, (refer Par. III), and of the person of defendant, (refer Par. IV), that the full faith and credit clause of the Constitution <u>precludes</u> any inquiry, (here by the Iowa Courts), into:

1. Merits of the cause of action;
2. Logic or consistency of the decision;
3. Validity of the legal principles on which the judgment is based; and
4. Whatever mistakes of law may underlie the judgment.

The judgment here was one for money.

The Court did not say that a defendant could not move in the first court, here, the Minnesota court, for alleged regularities; but that, in a proceeding under Art. IV, any defense within said categories could not be litigated in the Iowa courts.

Par. III - Applying the Rules of Law set forth in Par. II, with respect to subject matter jurisdiction, the Minnesota Court being a constitional court of general jurisdiction, (Sec. 5, of Minnesota Const. App A-26), it must be held as a matter of law that the cause of action set forth in the Complaint (App. A-11, 12, 13, 14) money damages in connection with a Minnesota contract, and also any ancillary proceeding, is within the subject matter jurisdiction of the Minnesota Court. This being so, said money judgment cannot be collaterally attacked for irregularity as to procedures adopted by the Minnesota Court.

Any alleged error or irregularity can only be corrected by appeal or in a direct proceeding in the Minnesota Court.

The Minnesota Court determined that it had jurisdiction (App. A-11).

The decisions of the Iowa courts relate, not to subject matter jurisdiction, but to alleged irregularity during the course of the proceedings. But the Minnesota Court, as set forth in its Decision (App. A-6, et seq), did not consider such procedure irregular, but rather as legal under Minnesota Law.

It is of course a matter of law that the Defendant could not contradict the fact that the Minnesota Court is a constitutional court of general jurisdiction.

Par. IV - As to Par. II, with respect to personal jurisdiction over Defendant in the Minnesota Court, the facts in the case are definite as respects the voluntary acts of Defendant and Defendant's attorney. The Iowa Courts so admit. There is no service of Summons to vacate, and thus establish that the court is without personal jurisdiction. There is no extrinsic evidence to raise an issue of fact for either a court or jury. The only issues are of law.

In connection with ancillary proceedings, Defendant was personally served in Iowa with a copy of the Minnesota Summons and Complaint, setting forth a money demand. Thus, due notice. But this involved no obligation for personal appearance. (App. A-29).

There being no appearance within 20 days, an affidavit of default was filed. (App. A-9). The then status of the action was quasi in rem. The pleadings contain no reference to any real estate.

Thereafter, Defendant filed several papers, signed pro se and verified before a notary public. These papers purported to be special appearances. (App. A-18; A-20).

The Minnesota Rules of Civil Procedure make no provision for special appearance. What is left of the procedure is limited. The Minnesota Supreme Court, in Cummiskey v Cummiskey, (1961), 259 Minn. 427; 107 NW (2) 864, (868), said:

> "The accepted purpose of a special appearance is to challenge the jurisdiction of the Court over the person of Defendant."

The purpose here was not to set aside service of a summons. Defendant appeared voluntarily. Defendant's attorney said his purpose was to challenge the "jurisdiction" of the Court.

The Court, as a constitutional court of general jurisdiction (Minn. Const. Sec. #5) had jurisdiction of the subject matter. The challenge was to the "power" of the Court to exercise that jurisdiction. (App. A-18, A-20). The Court had that "power". Clements v Utley, 91 Minn 352; 68 NW 188. It is not for the Iowa courts to gainsay. Defendant's attorney admitted appearing before Judge Knutson; and the Court so found. (App. A-23). On the authority of Clements v Utley, Judge Knutson overruled Defendant. (App. A-23-35). No appeal was taken. And said Order of Judge Knutson was affirmed in the Decision of the Court. (App. A-9).

As to the contentions of the Iowa Courts as to the invalidity of the Orders of Judge Hall and Judge Knutson, see Par. V hereof.

At the time of filing the first paper, one Everett Gross, representing himself as a Montana attorney, but then living in Iowa, made application to the Court to represent Defendant. This application was allowed, but inadvertently an order in the matter was not then made. This was covered by a nunc pro tunc order, supplementing the record, but nothing more. (App. A-29). While that attorney claims he was not notified of such allowance, he did appear in Court and argue the claims made by Defendant. The fact is that Defendant was in court pro se and by attorney. And this is not a case of unauthorized representation.

The statutory basis of the ancillary proceeding was MRCP 4:04 then in effect. (App. A-27). It contained no provision for a special appearance to question the jurisdiction of the Minnesota Court over the subject matter. And even though the ancillary proceedings might have been invalid, the statute brought such party within MRCP 5:01 (App. A-27) as having appeared by filing a

paper. (The section was amended 10 years later, but certainly not to cover a valid situation.)

And it is a contradiction to employ a special appearance under MRCP 4:04 to set aside a voluntary appearance. The act of Defendant related to the subject matter, and not to the person.

Defendant did not claim that the Court did not have jurisdiction over ancillary proceedings; or that Plaintiff had not legally invoked the jurisdiction of the Court therein.

The claim was made that the Hennepin County District Court did not have power to issue an order effective in another county in the state. The attack was upon the power of the court. The property in which Defendant had an interest was in Fillmore County. Motions of Defendant, (App. A-18, A-20). And a voluntary appearance and challenge to the jurisdiction of the Court itself, whereby the Court is asked to rule on its own powers, constitutes an "appearance" and a submission to the jurisdiction of the Court for all purposes. Burger v Berger, 1957, Tex. 298 SW(2) 119. Here, Defendant definitely attacked the power of the Minnesota Court. And whether the attack was by motion or other pleading is not material.

In this connection, Defendant further admitted jurisdiction in the Minnesota Court, by praying: "The Defendant asks that said pretended service be quashed and that this action be dismissed at Plaintiff's costs." In Minnesota, costs are an incident of jurisdiction, without which costs cannot be assessed or allowed. Also, the Court was asked to assert its jurisdiction and dismiss the action.

The motions of Defendant (App. A-18, A-20) relate to subject matter jurisdiction and not to

personal jurisdiction. (see Cummiskey v Cummiskey, supra). And such claimed lack of jurisdiction was special and not general.

The motion of Defendant was denied. (App. A-23). The claim made therein was contrary to Minnesota law. Clements v Utley, supra. Whether such attack was by motion or pleading is not material. The Defendant by said voluntary appearance was in; and was then required to appeal or file an answer under MRCP 12. On appeal from any judgment thereafter, Defendant could again renew the claims made in the Motion.

Defendant had full notice of the claim made in the Complaint; and also an opportunity to be heard thereon. No issue under the 14th Amendment is involved. The claims of Defendant were voluntarily limited; such limitation was self-imposed. Upon being so overruled, Defendant was in for all purposes. Hughes, C.J. in Chicot v Baxter, 60 S Ct. 317; 308 US 271; Grubb v Publ. Util. Comm. 50 S Ct 378; 281 US 470. Defendant was not free to just walk away. And failing to either appeal or answer, the Minnesota Court may enter a default judgment without notice. Justice Mitchell, in Heinrich v Englund, 34 Minn 395; 26 NW 112. Notice thereafter was by the Clerk under MRCP #77:04. After receipt of such Notice by the Clerk, Defendant could have moved the Minnesota Court for any relief claimed proper. The Iowa Courts ruled contrary to Minnesota Law, on an alleged irregularity, notwithstanding full jurisdiction in the Minnesota Court as set forth in its Decision. (App. A-11).

After lapse of sufficient time to establish abandonment and default, a second and appropriate affidavit of default was made. The Court then filed its Decision. (App. A-6-17). And pursuant thereto the Clerk entered the Judgment sued on and covered in the authenticated copy. (App. A-1).

In this connection, see Johnson v DiSievens, 1956, 347 Minn 118, 78 NW (2) 960. A letter by a Michigan attorney to the Texas Court was held to be an appearance; under the Texas Code.

Also, Johnson v Haley, 1957, 357 Mich 411; 98 NW (2) 355. Defendant appeared specially in California Court and objected to its jurisdiction. He was overruled and withdrew. Upon being sued in Michigan, Defendant attempted again to contest California ruling of jurisdiction.

Par. V - Applying the Rules of Law in Par. II, with respect to miscellaneous matters adopted by the Iowa Courts as the basis of refusal to give full faith and credit to the Minnesota Judgment, being matters which the Minnesota Court as set forth in Par. II, has ruled cannot be used to collaterally attack a Minnesota Judgment.

Nunc Pro Tunc Orders. MRCP Minn Stat Ann V-27A, pub. 1958, provides for ex parte orders. Sec. 5:01, 6:04, 77:04 and 103:03.

A nunc pro tunc order is a limited form of ex parte order. Its function is to supply a record of judicial action previously taken; to supply omissions in the record of what was previously done; and to make the record speak the whole truth. An examination of the Order by Judge Hall (App A-29), clearly shows that it only completes the court record. Does any member of the Court think that the Chief Judge could be induced to sign a false order? Likewise, the Order by Judge Knutson (App. A-23-25). Does any member of the Court think that Judge, now Chief Judge, would falsify a court record?

See, Minn. Practice & Procedure, 1923, Elliot, (ex-Minn. S Ct. Jus.), (Vol 1, pp 284-5, Sec. 324 (abbr). When a direction or decision has been made, but not reduced to writing, the Court may at a latter date sign and enter the order as

of the time when it was actually made. To the same effect, Wright v Nicholson (1980) S Ct 134 US 136. A nunc pro tunc order, not being appealable, cannot be collaterally attacked in Minnesota; likewise out of the state.

As to objections by the Iowa Courts as to the entry of the Minnesota Judgment, refer: Justice Mitchell, in Heinrich v Englund, supra. Syl. "In an action arising on contract for the payment of money only, where there has been an appearance but no answer by defendant, he is not entitled to notice of the entry of judgment". And as to notice, see MRCP #77:04, Minn Stat Ann V-27-A, pub. 1958. After receipt of such Notice, defendant could have moved the Minnesota Court for any relief claimed proper.

CONCLUSION

The Decisions of the Iowa Courts are in violation of said Art. IV, (Par. I) and of Minnesota Law, (Par. II); with important fact recitals therein not in accord with the Record.

As a matter of law, the Iowa Courts are required to give the Minnesota Judgment the same force and effect as it has in Minnesota. See Par. III and IV.

And also as a matter of law, alleged irregularities are irrelevant. See Par. V.

With subject matter and personal jurisdiction under Minnesota Law, any alleged irregularities in the Minnesota Judgment sued on, being the Judgment set forth in the authenticated copy (App. A-1) must be corrected by appeal or by direct proceedings in said Minnesota Court, as required by said Art. IV.

For the foregoing reasons, Petitioner respectfully prays that this Court grant the Relief herein

prayed including a further consideration and Rehearing with respect to said Petition for Writ of Certiorari.

Respectfully submitted

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Attorney Pro Se

Hon. Harry H. Peterson
Of Counsel

CERTIFICATE OF GOOD FAITH BY COUNSEL

The undersigned, as Counsel Pro Se, does hereby certify that the

PETITION FOR RECONSIDERATION AND REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

submitted herewith is presented in good faith and to raise questions of law as therein set forth; and not for delay.

Dated, this 10th day of March, 1971.

Clifford F. Hansen
Counsel Pro Se